

# Home Education Advisory Service

## **Response to DfES consultation on the draft document Elective Home Education: Guidelines for Local Education Authorities**

### **Comment on the title of the document**

A number of our respondents queried the need for the word 'elective' in the title and in the definition given at section 1.1. There was a strong feeling amongst our respondents that this concept alienates those parents who have taken on the responsibility of educating their child at home because no other provision has been made available. HEAS notes that it has always been the case that the majority of parents undertake home education reluctantly because they feel forced to do so. The definitions which are given in sections 1.1 and 1.2 make it eminently clear that there is a distinction between education at home provided by the parents and home tuition provided by the LEA. For the sake of inclusiveness it would be helpful to remove the term 'elective' particularly as it is not in common use and it is hardly found in the text of the draft guidelines at all.

### **Part 1 Introduction**

1.1 The definition of home education in this section is awkwardly expressed. We suggest the following:

This document refers to full-time education which is provided by parents or guardians for their children at home instead of sending them to school. It does not apply to home tuition provided by a local education authority or to situations where a local education authority provides education otherwise than at a school.

1.3 The second sentence of this section has grammatical problems which affect its clarity. Two connectives 'and' and 'therefore' are used in the second half of the sentence but only one should be used, and the singular verb 'aims' is used with the plural noun 'guidelines'. The sentence should read 'The guidelines recognise that... home education is a key aspect of parental choice, therefore they aim to encourage ...'

### **Part 2 Parental rights and responsibilities**

2.4 The first sentence of this section reads very awkwardly as it contains two connectives, 'and so' and 'therefore'. It would be clearer for the sentence to read 'Parents may decide to exercise their right to home-educate their child from birth, therefore the child does not need to be enrolled at school.'

Further, although it is implied in this section, it would be helpful if the guidelines were to state clearly at this point that parents are not required to notify the LEA of their decision to educate their child at home.

## **LEAs' responsibilities**

2.5 This is the first of the paragraphs which define the responsibilities of LEAs. It is strange to find that the second half of this paragraph (beginning 'LEAs will also wish to make it clear ...') contains two of the responsibilities of parents, namely that it is the parent who assumes financial responsibility for the child's education and that the parent must ensure that home education continues until the appropriate school leaving date. These two points would be better placed under 'Parental rights and responsibilities' in section 2.4.

2.8 This section refers to the fact that if a school attendance order has been issued, parents may provide evidence to the LEA (or to the court) that they are now providing an appropriate education and apply to have the order revoked. For completeness it would be helpful to state here that the court, not the LEA, makes the final decision as to whether or not the education is efficient and suitable.

## **Part 3**

### **Clear policies and procedures**

3.3 The wording of part of this section is somewhat strange. Surely the document should state that 'each LEA should have a written policy on home education' not 'a written policy statement on home-educated children and their families'?

### **De-registration from School and Withdrawing the child**

It is not clear why two sections are needed here to explain the procedure of withdrawing a child from school. The title 'De-registration from School' is rather an illogical expression. For clarity it would be better to use the title 'Withdrawing the child' for sections 3.4 and 3.5 and delete sections 3.8 to 3.11 altogether (please see below for our comments on these sections).

3.5 The information in 3.4 is clearly stated but the comments in 3.5 imply that the Education (Pupil Registration) Regulations 1995 apply equally to maintained and to independent schools. Some time ago HEAS enquired about the position and the DfES' Independent Schools Division confirmed that the proprietor of an independent school did not at that time have a duty to inform the LEA when a pupil ceased to attend the school. It would be helpful if this point were to be clarified in the guidelines according to the current position.

It would also be useful if the guidelines were to state clearly in section 3.5 what should happen to a registered pupil's school records once the child is withdrawn from school. Some schools give them to the parents, some refuse to do so and others seem uncertain about what to do with them.

### **Withdrawing the child**

3.8 This section is misplaced here and would be better placed in the introductory section, as the remarks are of a general nature. They are not relevant to this part of the guidelines.

3.9-3.11 The first sentence is an unnecessary re-statement of the information that has already been given in Section 3.4. The second sentence has been taken from the Scottish Executive document *Guidance on the circumstances in which parents may choose to*

*educate their children at home* at 3.7, first bullet point. The sentence has been changed to reflect the fact that parents in England do not have any obligation to notify the LEA of their intention to home educate, but this introduces a very confusing contradiction as the rest of the sentence 'recommends' that parents should notify the LEA 'as soon as possible...'. The rest of section 3.9 is taken virtually verbatim from the Scottish document. It is irrelevant and legally unjustifiable in terms of English education law and should be removed entirely.

Evidently section 3.10 has been taken from the Scottish document and included here in order to cover concerns about child protection issues when children are withdrawn from school. This is unnecessary as these concerns are dealt with adequately in sections 4.10-4.12 later on in the draft guidelines. Section 3.10 must be removed entirely from the guidelines as it is unworkable in England, where parents do not have to seek the authority's consent before withdrawing a child from school. The provisions of section 3.10 are not in accordance with education law in England and they contravene the Education (Pupil Registration) Regulations 1995.

The only sentence in section 3.10 that is important and useful is the statement 'There is no express requirement in the 1996 Act for LEAs to investigate actively whether parents are complying with their duties under Section 7.' This would be well placed under 'LEAs' responsibilities' between sections 2.5 and 2.6.

Section 3.11 is again only relevant to Scotland where education authorities appear to have the legal power to refuse or delay the parent's request for the child's name to be removed from the school's admission register. LEAs in England have no such power as the child's name must be removed from the register upon receipt of the parent's written notification that the child is to be educated at home. LEA officers are not allowed to make judgements in order to discriminate against parents whom they consider might not be able to make adequate arrangements for home education. It is important that, as Slade LJ stated in the Court of Appeal's proceedings in the Perry case (*R v Gwent County Council, ex parte Perry, 1985*), parents should have 'sufficient time to set in motion their arrangements for home education ...'. It would be helpful if the guidelines were to state this fact clearly.

### **Providing an "efficient and suitable" full-time education**

The inclusion of the subheading 'Providing an "efficient and suitable" full-time education' detracts from the clarity of the draft guidelines at this point as it does not fit with the material on procedures that is laid out in Part 3 of the document. Section 3.12 with footnote has already been quoted in full at section 2.4. It is unnecessary to include it again here. The definition of 'efficient' has already been properly included at section 2.4, and the comments on the meaning of 'full-time' given in the first three sentences of section 3.13 would be better placed after section 2.4 as a separate point. The second part of section 3.13 beginning 'Nevertheless,...' including the thirteen bullet points and the concluding sentence, form a separate point which would be better expressed under a subheading 'Parents' arrangements for education at home' or similar title. The material in section 3.14 to 3.16, which is very important for the improvement of relationships between parents and LEA officers, would then follow on logically and naturally under this title.

3.15 One comment needs to be made about an item on the list of desirable resources in this section. Although for most families ICT and the use of computers would be a natural part of their home education, certain faith groups including Brethren families are fundamentally opposed to computers and ICT for religious reasons. It would be useful for

the guidelines to mention that LEA staff must be sensitive to religious convictions of this kind.

3.16 This section states that a full written report should be sent to parents if the LEA has any concerns about the standard of their educational provision. HEAS is aware that in many LEA areas a report is sent to home educating families automatically, regardless of whether or not there are any concerns about the home education. We consider that it is good practice for reports to be sent to parents. Comments from our subscribers show clearly that parents regard this as an important matter of courtesy on the part of the LEA. HEAS subscribers have also told us that it is very unsettling to give full information to the LEA officer and then to hear nothing further. Other families have expressed appreciation for the reports but have argued strongly for a copy to be sent to them while the document is still in draft form. This courtesy is accorded to schools after an Ofsted inspection and parents would appreciate a similar opportunity to enable them to correct any factual errors before the report is finalised. It would also be helpful if LEAs could be encouraged to set a timescale for the production and distribution of draft and final reports in their home education policy document. We believe that these actions would help to improve relationships between LEAs and home educating families.

#### **Access to the home**

3.17 In the fourth sentence of this section, may we point out that the word 'enough' after the word 'sufficient' is redundant? HEAS welcomes the inclusion of the recommendations in this section. They provide helpful confirmation that parents have a choice of ways in which to provide information about their educational arrangements. It would also be useful if the guidelines were to add that the LEA should make 'informal enquiries' when they approach parents for information. This is consistent with case law (*Phillips v Brown, 1980, Divisional Court*).

3.18 The second sentence of this section states that it is for the LEA to decide how often to make contact with a family. This assertion is of questionable legality and it also contradicts the statement later in the draft guidelines at section 4.6 that '...the parents and the authority should consider and agree what future contact there will be between them.' This latter statement seems reasonable and in keeping with the aim of promoting good relationships between families and the LEA, so we would like to ask for the second sentence of 3.18 to be removed.

#### **School Attendance Orders**

3.19 This section asserts that where there is 'conflicting evidence as to the home-educating characteristics noted in paragraph 3.15 above, the only way the LEA can reasonably clarify these contradictions may be to seek access to the home environment.' This comment produced an angry reaction among parents who sent responses to HEAS about the draft guidelines. Parents pointed out that there are no circumstances in which the characteristics listed in section 3.15 could only be proven by requiring entry into the home.

It would be reasonable to suggest that there may be occasions where more information about the nature and scope of the education provided and the resources used might be needed, but it is indefensible to say that the only way that this could be achieved is by entry to the home. Parents expressed the view strongly that they have a right to privacy in their family life, and they are alarmed and outraged that the draft guidelines appear to give the LEA *carte blanche* to judge that a parent's refusal of a home visit could of itself justify the service of a school attendance order.

From many conversations between HEAS representatives and LEA officers over the years it is clear that there is a deep and completely unjustified mistrust among many of the latter about families who prefer not to allow home visits. HEAS believes that if the guidelines state that there are circumstances where information about the home education may only be obtained by demanding entry into the family's home, this would give undue encouragement to LEA officers who hold the mistaken and unlawful belief that a home visit is essential.

HEAS considers that if officers had any concerns that could only be allayed by a visit to the home, these would not be concerns of an educational nature. Any concerns about welfare and child protection would not be a matter for the Education Department but rather for the local authority's Social Services Department as specified in sections 4.10 and 4.12. Accordingly, the reference in section 3.19 which states that 'If the parents refuse to allow access to their home, the authority might reasonably conclude ... that they have insufficient information to satisfy themselves as to the efficiency and suitability of the parents' education provision, and consequently serve a School Attendance Order ...' should be removed as it is inconsistent with human rights legislation.

### **Children with Special Educational Needs**

3.23 The first sentence states that where a child has a statement of special educational needs and is home-educated, 'it remains the LEA's duty to ensure that the child's needs are met.' This assertion introduces an ambiguity when it is read together with the first sentence of section 3.24: 'If the parents' arrangements are suitable, the LEA is relieved of its duty to arrange the provision specified in the statement.' This latter statement is, of course, a correct paraphrase of section 324(5)(a) of the Education Act 1996. The ambiguity would be removed without compromising the LEA's duty if section 3.23 were changed to say 'Where a child has a statement of special educational needs and is home educated, the statement must remain in force and the LEA must ensure that parents can make suitable provision, including provision for the child's SEN.'

An HEAS subscriber made the comment that the guidelines should state that educational difficulties often disappear when children are educated at home. For example, a child with hearing difficulties may not be able to hear adequately in the acoustic of the classroom but there may be no problem in the quiet environment of the home. Our subscriber says that the LEA's procedures should take account of this fact.

Another parent points out that in order to be able to make a full contribution to the assessment and review process, parents of home educated children with SEN should have access to copies of the same guidance information provided for heads of schools. It would be helpful if the guidelines were to state that LEAs must provide home educating parents making educational provision for a child with SEN with copies of local protocols and notes for guidance on completion of the forms required. It would also be good practice for the guidelines to recommend that the LEA should inform parents that copies of the SEN Code of Practice are available from the DfES.

## **Part 4**

### **Developing relationships**

Sections 4.1 to 4.8 consist mostly of a re-statement of points that are made earlier in the document. Our respondents noted that these sections add very little to what has already been said and many added that the purpose of this part of the draft guidelines is not clear at all. Others said that the draft guidelines do not distinguish clearly between the procedures and issues that apply at the beginning of home education and the on-going

process of monitoring the arrangements over time. Section 4 could be used explicitly to describe and recommend good practice for subsequent contacts between the LEA and home educating families. Some suggestions for reasonable and tactful ways of assessing a child's progress informally as part of the monitoring process could perhaps be included. It would also be helpful if the guidelines were to state that testing of children by LEA officers is not acceptable.

Section 4.6 seems particularly out of place here as any meeting of the kind that is recommended would take place at a very early stage in the home education. The reference to an agreement between parents and the LEA regarding the nature of the future contact between them is important but would be better placed after section 3.5.

### **Contact with parents and children**

4.9 This section recommends that user-friendly titles should be given to LEA staff who contact home educating families. HEAS has had discussions on this issue with many LEA officers and also with parents, and we have to report a wide difference of views on this matter. Many friendly and sympathetic LEA officers dislike the term 'inspector' or 'monitor' because they believe that it is intimidating to parents and they prefer to be seen as someone who acts in an advisory capacity. On the other hand, many parents view the use of a title such as 'facilitator', 'consultant' or 'adviser' as a somewhat patronising attempt to divert attention away from the fact that the LEA officer's remit is to assess the educational provision. New home educators have often contacted HEAS' advice line in distress and confusion after they have discovered that the LEA's home education adviser is not able to give advice on how to educate their child at home. In the long term, these laudable attempts to improve relationships may actually make the situation worse if parents feel that they have been misled by the connotations of the officer's title. Perhaps the only way of adopting a non-threatening title that does not give the wrong impression is to recommend a neutral name, for example 'home education officer', 'home education contact' or 'home education representative'.

### **Child protection**

4.11 Our respondents were concerned about the statement that 'LEAs may take a lead on these [child protection] issues because of their responsibility to assure themselves of the quality of education received by children educated at home.' This statement should be removed because it is unjustified. The role of the LEA is to check on the adequacy of the education at home and a clear distinction must be maintained between this statutory duty and the investigation of child protection concerns. Further, it was pointed out that the offending statement in 4.11 is unnecessary in the light of the recommendation in section 4.10 that if any child protection issues emerge in the course of LEAs' contacts with home educating families, 'these concerns should immediately be referred to the appropriate authorities using established protocols.'

Concern was also expressed about the last sentence of section 4.11: 'Thus, when a practitioner or professional becomes aware that a child is being educated at home, local information sharing arrangements should help them inform the LEA, so that they can fulfil their duty to ensure the quality of that education.' This statement has no relevance at all to child protection, which is the subject of this section of the draft guidelines. It is misleading and unhelpful to include it here.

### **Reviewing policies and procedures**

4.15 HEAS welcomes the recommendation that LEAs should review their policies and procedures on a regular basis in conjunction with parents and the home education organisations. This is very important in order to ensure that the best interests of home educated children are served by the improvement of relationships between LEA staff and families. It would also be helpful if the guidelines were to recommend that LEAs should make available to families a clearly defined procedure for making complaints.

4.16 Some parents made the observation that there is no formal way in which Ofsted obtains information from home educating parents in order to judge the efficiency of the LEA's arrangements. HEAS is aware that LEAs' home education policies and procedures are scrutinised but parents are not approached for feedback on the implementation of the procedures. Would it be possible for the guidelines to recommend that systems be introduced to enable parents' experiences to be taken into account when LEAs are inspected by Ofsted?

### **Flexi-schooling**

5.6 During discussions with the DfES' Improving Behaviour and Attendance Team in 2002 it emerged that the DfES wished to ensure that flexi-schooling was respected as an option for parents to consider for their children. HEAS was assured by the DfES Team that there was no requirement for the LEA's approval to be sought for a flexi-schooling arrangement if the head teacher of a school, the governors and the child's parents were in agreement. It is not clear, then, why the draft guidelines state that flexi-schooling requires the agreement of the head teacher 'and, in many cases, the LEA as well...'. According to the information given to HEAS by the DiES the agreement of the LEA is not required - but if it is needed, surely it is necessary in *every* case?

### **Truancy Sweeps**

5.12 Anger was expressed by our respondents regarding the incorrect and misleading information about truancy sweeps that is given in this section. The view was expressed strongly that the guidelines must state that home educated children have a right, not 'legitimate reasons' to be out during school hours. There is an important distinction here that must not be disregarded.

Section 4.21 of the Home Office guidance *Police Power to Remove Truants* states: 'No further action should be taken where children indicate that they are home educated - unless the constable has reasonable cause to doubt that this is the case'. The guidelines should state that there is no requirement for children or parents to give their names and addresses to truancy patrols. It is completely unacceptable that home educated children should be the only members of society who are forced to give their names and addresses to the police when they are merely exercising their rights as private individuals to be out and about.

It is incorrect to say that 'professionals involved in truancy sweeps will need to verify any information given to them'. In many cases such verification would be impossible as there are significant numbers of home educators who are not known to the LEA. The draft guidelines state correctly at section 2.4 above that parents are not legally required to inform the LEA about their intention to educate their child at home, therefore children of these families would not be on any list that might be maintained by the LEA. It would be useful if the guidelines were to mention this fact.

### **Traveller Children**

HEAS has some Gypsy Traveller families among its subscribers and on their behalf we welcome the statement in section 5.13 of the draft guidelines that LEAs should be sensitive to the ethos and needs of Traveller communities. Section 5.14 notes that 'Traveller children can be educated at home in the same way as other home-educated children' but it is all too common for families to seek advice from HEAS when the LEA's representative judges the arrangements to be unsatisfactory because their home education does not resemble a school curriculum. Discussions with families show that some LEA staff are completely unaware of the culture and customs of Travellers and they do not respect the right of families to educate their children according to their principles and convictions.

HEAS notes that some LEA staff in some areas have a very good understanding of the difficulties that Traveller children (whether settled or not) experience with mainstream education, particularly at secondary level. This understanding enables them to be pragmatic in their appraisal of the parents' provision for home education; they realise that the child will derive more benefit from a somewhat limited, basic education at home than they would from forced attendance at school. From HEAS' national perspective it is noticeable that there is an unacceptably wide range of attitudes towards education at home provided by Travellers. There are cases where parents' arrangements have been found acceptable and worthy of support by LEA staff in some areas but virtually identical provision made by other parents in different areas has been rejected out of hand by LEA officials there.

HEAS would like to suggest that as well as recommending education supervision orders it would be reasonable for the guidelines to encourage LEAs to offer as much support and advice as possible to Traveller families who show a real commitment to home education. It would also be very helpful if the guidelines could include a recommendation that LEA staff who are to have contact with Traveller families should be well briefed on Traveller issues beforehand.

## **Annex A Qualifications options**

The information on qualifications is a useful addition to the guidelines but it is necessarily of a very general nature because of the frequent changes that occur, particularly regarding GCSE. We would like to ask the DfES Team to consider mentioning in this section that a leaflet entitled *Examinations and Qualifications* is available from HEAS. This leaflet is continuously updated and it contains detailed information on the different options which are available to private candidates.

## **Useful contacts**

Please note that HEAS would like to make two changes to the details which are included in this section of the guidelines:

- 1) The annual subscription to HEAS is shortly to be increased from £12 to £13.50. We would be grateful if you would amend the entry accordingly.
- 2) Our email address is now [enquiries@heas.org.uk](mailto:enquiries@heas.org.uk)

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