



Department  
for Education

# **Elective home education**

**Departmental guidance for local  
authorities: draft for consultation**

**April 2018**

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## Summary

### About this departmental guidance

This is departmental guidance from the Department for Education. It is non-statutory, and has been produced to help local authorities understand their role in relation to elective home education.

### Expiry or review date

This guidance will next be reviewed before September 2019.

### Who is this guidance for?

This guidance is for:

- Local authorities
- Schools
- Organisations concerned with elective home education
- Parents, although a separate and parallel document for parents is published alongside this one

## Introduction

The government's aim is to ensure all young people receive world-class education which allows them to realise their full potential, regardless of background, in a safe environment.

Educating children at home works well when it is a positive choice and carried out with a proper regard for the needs of the child. This guidance is intended to help local authorities understand their powers and duties in relation to children who are being educated at home, and how those relate to the obligations of parents. The overall intention is to enable local authorities to operate effectively within the existing legal framework, and use resources effectively and proportionately according to the needs of the children concerned.

## 1. What is elective home education?

1.1 Elective home education is a term used to describe a choice by parents to provide education for their children at home or in some other way which they choose, instead of sending them to school. This is different to education provided by a local authority otherwise than at a school - for example, tuition for children who are too ill to attend school. Throughout this guidance, 'parents' should be taken to include all those with parental responsibility, including guardians and foster carers.

1.2 Parents may choose to engage private tutors or other adults to assist in providing a suitable education, but there is no requirement to do so. Learning may take place in a variety of locations, not just in the family home.

1.3 Although children being home-educated are not normally registered at any school or college, parents sometimes choose to make arrangements for a child to receive part of the total provision being made at a school, or at an FE college if the child is aged 14 or above. The purpose of this will often be to provide education in specific subjects more easily than is possible at home. Such arrangements are sometimes known as 'flexi-schooling'. Schools and colleges are under no obligation to agree to such arrangements, but some are happy to do so.

## 2. Reasons for elective home education - why do parents choose to provide it?

2.1 Parents may choose home education for a variety of reasons. The local authority's primary interest should lie in the suitability of the home education being provided and not the reason for it but the latter can have a bearing on how well a family is likely to carry it out. There are many reasons why parents educate children at home, including:

- Ideological or philosophical views which favour home education
- Religious or cultural beliefs, and a wish to ensure that education is aligned with these
- Dissatisfaction with the school system
- Bullying of the child at school
- As a short term intervention for a particular reason
- A child's unwillingness or inability to go to school
- Special educational needs
- Disputes with a school over the education of the child, in some cases resulting in 'off-rolling' or even exclusion

2.2 Some of these reasons mean that home education will be undertaken as a positive choice which is expected to lead to a better outcome for the child than other alternatives; in other cases however home education may be attempted almost as a last resort. When the impetus is a negative one, that may well have implications for the quality of home education which can be provided – although it should not be assumed that this is inevitably the case. Furthermore, these various reasons are not mutually exclusive and for some children at least several of them may apply. When local authorities engage with home-educating families they should bear in mind this diversity.

2.3 That diversity is likely also to be reflected in the provision made for home educated children. There is more discussion of this in the section dealing with the issue of 'suitability', but it should always be borne in mind that there are no specific legal requirements as to the content of home education provided the parents are meeting their duty in s.7 of the Education Act 1996 (see below for more on that duty). This means that education does not need to include any particular subjects, and does not need to have any reference to the National Curriculum (but see section 9 below on suitability); there is no requirement to enter children for public examinations. There is no obligation to follow the 'school day' or have holidays which mirror those observed by schools. Many home educating families do follow a clear academic and time structure but it should not be assumed that a different approach which rejects conventional schooling is necessarily unsatisfactory or constitutes 'unsuitable' education.

### 3. The starting point for local authorities

3.1 Parents have a right to educate their children at home. Section 7 of the Education Act 1996 provides that:

*"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."*

**3.2 This means that the responsibility for children's education rests with their parents.** In England, education is compulsory, but – despite the phrase 'child of compulsory school age' quoted above – going to school is not.

3.3 In the case of some children who are home educated, this means that they never attend school. More commonly, however, perhaps in around 80-90% of the total in most local authority areas<sup>1</sup>, children educated at home have attended school at some previous point.

3.4 Local authorities currently have no specific duties or powers relating to home education *per se*. This reflects the fact that the legal framework, contained in the Education Act 1996 (and essentially carried forward from the Education Act 1944), although allowing for home education, was not drawn up with a view to enabling ongoing oversight of significant numbers of home educated children. However, few people would argue today that parents should be able to exercise their right to home educate children with absolutely no independent oversight, despite their having the legal responsibility set out above. The job of each local authority is therefore to find an appropriate balance between parental autonomy and its overall responsibilities for education of children in its area.<sup>2</sup>

3.5 Because of this, the department recommends that each local authority should, as a minimum:

- have a written policy statement on elective home education which is clear, transparent and easily accessible, and preferably drawn up in consultation with local families who educate children at home and setting out how they will seek to engage and communicate with them;

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<sup>1</sup> See survey report by Association of Directors of Children's Services (ADCS) at <http://adcs.org.uk/education/article/elective-home-education-survey-2017-summary>

<sup>2</sup> Sections 13 and 13A of the Education Act 1996 and s.175 of the Education Act 2002.

- seek to offer guidance to all known home-educating families in their area and provide advice and support for parents who request it;
- regularly review their elective home education policies so that they reflect current law and local circumstances, and are compatible with this guidance document;
- provide clear details of their complaints procedure and deal with all complaints in a sensitive and timely manner.

3.6 Some local authorities go further than this, for example by operating voluntary registration schemes so that support can be given more readily, and more information is available on home educated children in their locality. Such schemes can also help authorities discharge the responsibilities which they have under ss. 436A and 437 of the 1996 Act (see below). However, registration is not a legal obligation for either parents or authorities.

3.7 Local authorities should bear in mind that when Ofsted carries out inspections of local authorities<sup>3</sup>, it reports on the way in which local authorities deal with vulnerable children in their areas. Home-educated children are NOT 'vulnerable' by definition; but some children educated at home do fall into that category, and therefore Ofsted will look at the way each local authority deals with this issue, in particular the ways in which it identifies children who are not receiving suitable education and what steps the local authority takes to deal with that. Local authorities should keep home educators and home education support organisations informed of Ofsted reviews and any input they will have.

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<sup>3</sup> Under s.136 of the Education and Inspections Act 2006.



## 4. How do local authorities know that a child is being educated at home?

### Children who have never attended school

4.1 One of the most significant issues for local authorities in maintaining adequate oversight is the initial identification of children who are being educated at home. As already noted, some children never attend school in the first place, and therefore an authority may be unaware of the very existence of a child who is being educated at home. There is no legal duty on parents to inform the local authority that a child is being educated at home. There is no overall database of children who live in particular areas. Local authorities may find census data useful, but it will never be accurate in that it is may be several years old, and may not have been completed accurately in the first place. Local authorities may not in general have open access to data relating to health or benefit claims (as opposed to being able to confirm receipt of benefits for specific families), and in any case there may be some parents who do not claim such benefits. Local authorities are therefore encouraged to use any other data sources available to them to identify children living in their area who are not on the roll of a state school or registered independent school.

4.2 Identification of children who have never attended school and may be home educated forms a significant element of fulfilling an authority's statutory duty under s.436A of the Education Act 1996 - to make arrangements to enable the authority to establish, so far as it is possible to do so, the identities of children in its area who are not receiving a suitable education. The duty applies in relation to children of compulsory school age who are not on a school roll, and who are not receiving a suitable education otherwise than at school (for example, at home, or in alternative provision). Until a local authority is satisfied that a home-educated child is receiving a suitable full-time education, then a child being educated at home is potentially in scope of this duty. The department's [children missing education statutory guidance for local authorities](#) applies.

4.3 It should be noted that the caveat in s.436A 'so far as it is possible to do so' should not be interpreted as meaning 'so far as the authority finds it convenient or practical to do so'. It means what it says, and the authority should do whatever is actually possible. If the department receives a complaint that a local authority is not doing enough to meet its duty under s.436A, it will consider whether there is sufficient basis for making a direction under s.496 or s.497 of the Education Act 1996.

4.4 In particular, local authorities should explore the scope for using agreements with health authorities, general practitioners and other agencies, to increase their knowledge of children who are not attending school. Some local authorities already actively encourage referrals from doctors and hospitals of children whom there is reason to think may be home educated. Under s.10 of the Children Act 2004 local authorities should have arrangements in place to promote co-operation between the authority and its partners who deal with children, and under section 11, arrangements should be in place

to ensure that functions are discharged with regard to the need to safeguard and promote the welfare of children. These arrangements should include information sharing protocols and it is possible for these to allow sharing of data on children who appear to be home educated and about whom there is a concern as to the adequacy of that education. The Data Protection Act 1998 allows for such sharing of data in principle but local authorities and their partners will of course need to ensure that their particular arrangements are compliant.

## Children who have attended school

4.5 In some respects, fulfilling the s.436A duty in relation to children who may be home educated is easier for local authorities when a child has attended a school, but it is not necessarily the case that such children will automatically become known to the local authority.

4.6 Although most local authorities encourage parents who withdraw a child from school for home education to notify the school and/or the authority, (and DfE guidance to parents also encourages this) there is no legal obligation on parents to provide such notification, either in writing or otherwise, or indeed to provide any reason for withdrawal. The only exceptions to this are (a) that a child may not be removed from the roll of a special school without the consent of the local authority if enrolled there under arrangements made by the local authority<sup>4</sup>, and (b) in cases where a child is enrolled at a school in accordance with a school attendance order, when the authority must revoke the order (or amend it to replace the school with a different school) before the child can be removed from the roll<sup>5</sup>.

4.7 It was formerly the case that schools were obliged by the Education (Pupil Registration) (England) Regulations 2006 to notify the local authority that a child had been withdrawn for home education only when the school had been notified of this in writing by the parents. From September 2016 the Regulations were amended so that the local authority must be informed of all deletions from the admission register when this takes place at a non-standard transition time. Local authorities may also require schools (including independent schools) to provide information, under arrangements set out by the authority concerned, about children who leave at standard transition times. Local authorities are entitled to ask schools whether there is any further information available which would suggest that a child may be now home educated, but a school may genuinely not know the reason for withdrawal. A state-funded school must respond reasonably to any request from the local authority for any information it has about the reasons for withdrawal.

4.8 As set out in the statutory guidance on Children Missing Education, referenced above, local authorities should also be working together to identify children, and share data about those who have left a school in one local authority area but have moved to

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<sup>4</sup> Regulation 8(2), Education (Pupil Registration) (England) Regulations 2006. A question on the future of this provision is included in the Call for Evidence issued at the same time as this draft guidance.

<sup>5</sup> Regulation 8(1)(a) of the same regulations

another.

4.9 These changes mean that a local authority should be more readily able to identify children in its area who are being home educated, or may be home educated, and it should be maintaining data on all such children, whether or not it also operates a voluntary registration scheme for home educating families.

## 5. Local authorities' responsibilities for children who are, or appear to be, educated at home

5.1 Although the duty under s.436A dealt with above means that local authorities must make arrangements to find out so far as possible whether home educated children are receiving suitable full-time education, once that has been established local authorities have no specific statutory duty to monitor the quality of home education on a routine basis.

5.2 Discussion of local authority responsibilities in relation to home education tends to centre on those families where the education is unsatisfactory - or at least potentially so - and an authority's home education policies need to be clear about the processes used in such cases. However, local authorities' policies should also make clear also how the authority interacts with those families where a suitable full-time education is being provided and both parties wish to maintain a suitable level of contact and assurance. Children in these families where children do receive a suitable education at home form a very significant proportion of the total number of home educated children in England, and it is important that a system is in place for them which is proportionate and therefore light-touch where that is appropriate, but can act in the interests of the child, particularly if a change in circumstances occurs. Maintaining such oversight is consistent with the local authority's duty under s.436A.

5.3 There are no detailed legal requirements as to how such a system should work, and it is for each local authority to decide what is necessary and proportionate. Seeking to establish a positive relationship between the local authority and the home-educating parent will allow authorities to better understand parents' educational provision and preferences and offer them appropriate support. A positive relationship will also provide a sound basis if the authority is required to investigate assertions from any source that a suitable education is not being provided.

5.4 However, the department recommends that local authorities:

- should provide parents with a named contact who is familiar with home education policy and practice and has an understanding of a range of educational philosophies;
- ordinarily make contact with home educated parents on at least an annual basis so the authority may reasonably inform itself of the current suitability of the education provided. This will enable the local authority to fulfil its duty to serve a notice on any parent who does not appear to be providing efficient and suitable education (see below);
- have a named senior officer with responsibility for elective home education policy and procedures, and the interaction with other work on issues such as unregistered settings, vulnerable children, and welfare;
- organise training on the law and home education methods for all officers who have contact with home-educating families;

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- ensure that those LA staff who may be the first point of contact for a potential home-educating parent understand the right of the parent to choose home education. It is very important that parents are provided with accurate information from the outset to establish a positive foundation for the relationship;
- Work co-operatively with other relevant agencies such as health services to identify and support children who are being home educated.

## 6. What should local authorities do when it is not clear that home education is suitable?

6.1 Questions as to the quality of home education provision normally arise either when a child is first being home educated, or alternatively when there is a change in the circumstances of a child whose education was previously satisfactory. In the latter case, this change may not be a specific event; it can simply be that as a child grows older, the provision of education is becoming beyond the resources of the parents.

6.2 Families beginning home education sometimes state that they are entitled to a period during which the home education provided for the child may not meet the requirements in s.7 because they are still, as it were, building up the provision to a satisfactory level. Some parents may go further and describe this period as being necessary for 'de-schooling'. There is no legal basis for such a position. Whilst it is not unreasonable that good home education develops with experience, and it would be unrealistic to make a judgement about the suitability of home education provision only a few days after it is started, families should be aiming to offer satisfactory home education from the outset, and to have made preparations with that aim in view. Every week in which a child is not being educated properly is a week lost. In such cases, a reasonable timescale should be agreed for the parents to develop their provision; it is easier to do this if the parents are engaging constructively with the local authority.

6.3 Issues related to what constitutes satisfactory home education are dealt with in later sections of this guidance. This section deals with the sequence of action which may have to be undertaken when provision appears to be unsatisfactory.

6.4 The department's advice is that in all cases where it is not clear as to whether home education is suitable (including situations where there is no information available at all), the authority should attempt to resolve those doubts through informal contact and enquiries. An authority's s.436A duty (and that under s.437, see below) forms sufficient basis for informal enquiries. Furthermore, s.436A creates a duty to adopt a system for making such enquiries.

6.5 The most obvious course of action is to ask parents for information about the education they are providing. Parents are under no duty to respond to such enquiries, but if a parent does not respond, or responds without providing any information about the child's education, then it will be very easy for the authority to conclude that the child does not appear to be receiving suitable education. This is confirmed by relevant case law.<sup>6</sup> In many cases, this will allow the situation to be resolved, either by evidence being provided that the home education is satisfactory, or by agreement on alternative approaches.

6.6 Informal enquiries can include a request to see the child, either in the home or in another location. But the parent is under no legal obligation to agree to this simply in

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<sup>6</sup> *Phillips v Brown* [1980] Lexis Citation 1003

order to satisfy the local authority as to the suitability of home education, although a refusal to allow a visit can in some circumstances justify service of a notice under s.437(1) or even a school attendance order.<sup>7</sup> The question of access to the child in relation to safeguarding powers is dealt with in a later section.

6.7 It should be borne in mind that there are alternatives which fulfil the s.7 duty other than full-time education at home; these include flexi-schooling, which is described in a later section.

6.8 If informal contacts do not resolve the position, then the 1996 Act provides a framework for formal action.

6.9 Under s.437(1) of the Education Act 1996, local authorities must act if it appears that parents are not providing a suitable education. This section states that:

*"If it appears to a local authority that a child of compulsory school age in their area is not receiving suitable<sup>8</sup> 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."*

Section 437(2) of the Act provides that the period specified for a response shall not be less than 15 days beginning with the day on which the notice is served.

6.10 Local authorities considering whether they should serve a s.437(1) notice in a specific case should note that current case law means that a refusal by parents to provide any information in response to informal enquiries will in most cases mean that the authority has a duty to serve notice under s.437(1). This is because in the absence of other information that suggests that the child is being suitably educated and that the parents' refusal to answer is for some unrelated reason, the only conclusion which an authority can reasonably come to, if it has no information about the home education provision being made, is that the home education does not appear to be suitable.

6.11 The local authority must consider any response made by the parent in response to the s.437(1) notice, in the light of s.437(3). Section 437(3) refers to the serving of school attendance orders:

*"If –*

*(a) a parent on whom a notice has been served under subsection (1) fails to satisfy the local authority, within the period specified in the notice, that the child is receiving suitable education, **and***

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<sup>7</sup> *Tweedie v Pritchard* [1963] Crim LR 270; *R v Surrey Quarter Sessions Appeals Committee ex parte Tweedie* [1963] Crim LR 639.

<sup>8</sup> 'suitable' means efficient, full-time, and suitable to the child's age, ability, and aptitude, and to any special educational needs they may have (section 436A(3))

*(b) in the opinion of the authority it is expedient that the child should attend school,*

*the authority shall serve on the parent an order (referred to in this Act as a "school attendance order"), in such form as may be prescribed, requiring him to cause the child to become a registered pupil at a school named in the order."*

6.12 In considering whether it is satisfied by the parent, it is open to the authority to consider any other relevant information available to it – not only through its own contacts with the family but also information provided by other agencies and other sources and the child's former school (if any), as to the child's circumstances and needs.

6.13 The information needed to satisfy the test in s.437(3)(a) depends on the facts of the case and the judgement of the local authority. However, if the parent refuses to make any response to a notice served under s.437(1) that refusal in itself is likely to satisfy the test in s.437(3)(a) - and such a parent should expect to be served with a school attendance order.

6.14 The other limb of s.437(3) relates to whether it is expedient for the child to attend school. If the home education is not suitable in terms of s.7, then normally it would be expedient<sup>9</sup>. However, there are some circumstances in which the authority might reasonably take the view that it is not - although there would normally need to be some exceptional circumstance to justify not making a school attendance order. Examples where this could be the case are:

- a. if the child is within a few weeks of ceasing to be of compulsory school age;
- b. if the child has physical, medical or educational needs leading to extreme vulnerability in a school setting, and the local authority should consider alternatives such as tuition provided by the authority itself;
- c. the parent is actively working with the authority to improve the home education and seems likely to achieve suitability within a very short time.

## **After a school attendance order is served**

6.15 At any stage following the issue of the order, parents may present evidence to the local authority that they have now made satisfactory arrangements for the child's education and apply to have the order revoked. This evidence must be considered, and the order must be revoked unless the authority is of the opinion, having considered that evidence, that the parents have not made satisfactory arrangements.

6.16 If the local authority refuses to revoke the order, parents can choose to refer the matter to the Secretary of State, who may give a direction to the local authority which

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<sup>9</sup> In *Phillips v Brown*, 'expedient' was defined as 'advantageous, fit, proper or suitable to the circumstances of the case'



either requires revocation of the order, or confirms it.

6.17 Whether or not the parents have sought revocation and intervention by the Secretary of State, if they do not cause the child to attend school then the authority should consider prosecution, and should proceed with this unless there is very good reason not to do so. An example of that might be because the circumstances point to seeking an Education Supervision Order instead (see below) - for example, the family might have few resources and fines would have less relevance. Under s.447(1) of the 1996 Act, a local authority considering prosecuting a parent for non-compliance with a school attendance order must in any case consider either as an alternative to prosecution or as well as prosecution, making an application for an Education Supervision Order (the implications of this are dealt with in the following section on safeguarding).

6.18 If the local authority does prosecute the parents for not complying with the order, then it will be for a court to decide whether or not the education being provided is suitable, full-time and efficient. The court can direct that the order shall cease to be in force if it is satisfied that the parent is fulfilling his or her duty.

6.19 The department is aware that some local authorities have been reluctant to prosecute for non-compliance with a school attendance order, for reasons connected with costs, and the behaviour of some parents who deliberately withhold information about home education provision but are then able to easily satisfy the court that the home education is suitable. This is an understandable concern, but local authorities must bear in mind their public responsibilities as prosecutors; in such cases they may wish to seek legal advice about the prospect of obtaining a costs order against a successful defendant on the basis that the prosecution would have been unnecessary if not for the defendants' unreasonable conduct.

6.20 It should be noted that the offence of not complying with a specific school attendance order is only committed once. Therefore if a parent is convicted and fined, but still does not send the child to school, the process of serving a notice under s.437(1) and if necessary, serving a further order under s.437(3) must be undertaken again. This means that a parent willing and able to be fined repeatedly can continue unsatisfactory provision of home education indefinitely, if the local authority relies on education law alone. The implication of this is that in some cases the local authority may need to consider using other powers.

## 7. Safeguarding: the interface with home education

7.1 Sections 10 and 11 of the Children Act 2004 give local authorities general duties for promoting the well-being and (in relation to their non-education functions) safeguarding and promoting the welfare of children in their areas. This includes children educated at home as well as those attending school. Section 175 of the Education Act 2002 requires authorities to make arrangements for ensuring that their education functions are exercised with a view to safeguarding and promoting children's welfare. In effect therefore the general duties of local authorities in relation to safeguarding are the same for all children however they are educated.

7.2 The department's view is that there is no proven correlation between home education and safeguarding risk. In some serious cases of neglect or abuse in recent years, the child concerned has been home educated but that has not usually been a causative factor and the child has normally been known anyway to the relevant local authority. However, it must be acknowledged that a child being educated at home is not necessarily being seen on a regular basis by professionals such as teachers and this increases the chances that any parents who are using home education to avoid independent oversight may be more successful by doing so.

7.3 This means that in drawing up their home education policies local authorities should be very clear about the circumstances in which they may be relying on safeguarding powers rather than those available under education law, and in particular they should not attempt to pressure parents by conflating the two.

7.4 As already noted, the local authority has no express statutory powers in the Education Acts to enter the home to enquire into the education being provided without the agreement of the parents, nor can it impose any legal obligation on parents to let its officers see or talk to children for the purposes of monitoring the provision of elective home education. But there may be cases where the parents' refusal would be sufficient, taken together with other evidence and circumstances, to justify the making of a school attendance order.

7.5 Local authorities sometimes cite their safeguarding powers as being relevant to determining whether a child is receiving a suitable education, and the actions they can take if he or she is not.

7.6 A failure to provide suitable education is capable of satisfying the threshold requirement contained in s.31 of the Children Act 1989 that the child is suffering or is likely to suffer significant harm. 'Harm' can include the impairment of health or development, which means physical, intellectual, emotional, social or behavioural development, so the provision of unsuitable education clearly can amount to this. The causing of significant harm need not be intentional or deliberate, but case law<sup>10</sup> indicates that it must be 'considerable, noteworthy or important'.

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<sup>10</sup> *In re B (A Child)(Care proceedings: Threshold Criteria)[2013] 1 WLR 1911*

7.7. Whether the provision of unsuitable education does amount to significant harm must always depend on the particular circumstances of the child, and whether those circumstances mean that the child's intellectual and social development are being, or are likely to be, significantly impaired. Case law does provide examples where lack of suitable education has amounted to significant harm.<sup>11</sup> Although some cases will be relatively clear-cut (for example if a child was being provided with no education at all for months), in other cases a local authority may need expert advice from teachers or educational psychologists.

7.8 Sometimes the local authority may not have been able to obtain sufficient information to determine whether the significant harm threshold is met and the authority should consider employing its powers under Part 5 of the Children Act 1989.

7.9 The starting point for this would normally be an investigation under s.47 of the 1989 Act, which requires an authority to make enquiries to enable it to decide whether action should be taken to protect the child's welfare, if it has reasonable cause to suspect that the 'significant harm' threshold referred to above is met. Reasonable cause can include the lack of any substantive information about a child's education, so if the 'if it appears' test in s.43(9) is satisfied then there will usually be reasonable cause in terms of s.47. These enquiries can include taking steps to gain access to the child.

7.10 Such enquiries may yield enough information. If they do not, and in particular because the parents refuse access to the child then the authority has a number of options available. It can apply to a court for a child assessment order under s.43 of the 1989 Act. For such an order to be made there must be reasonable cause to suspect that the significant harm threshold is met, the assessment must be necessary to determine whether the threshold is met, and it must be unlikely that an assessment would be satisfactorily made without such an order.

7.11 In many cases the use of an education supervision order (ESO) under s.36 of the 1989 Act will in any case be appropriate and sufficient. These orders are made under s.36 of the Children Act 1989 and give local authorities a formal supervisory role in the education of children who are subject to them. The High Court or the family court can make an order if satisfied that a child of compulsory school age is not receiving efficient full-time education suitable to the child's age, ability and aptitude and to any special educational needs they may have. Where a school attendance order is in force for the child but has not been complied with, there is a presumption that the child is not receiving a suitable education unless the contrary is demonstrated. The advantage of an education supervision order is that it continues to be in force so long as determined by the court (which may extend it beyond the initial one-year term); it is not a 'one-off' like prosecution for non-compliance with a school attendance order.

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<sup>11</sup> *Re S(A Minor) (Care Order: Education)* [1978] QB 120 and *Re O (A Minor) (Care Proceedings: Education)* [1992] 1 WLR 912

7.12 As noted previously, the use of an ESO should in any case be considered as an alternative to, or as well as, prosecution for non-compliance with a school attendance order. Use of an Education Supervision Order does not depend on the 'significant harm' threshold being met, and under s.36(5) of the 1989 Act, unless it is proved that a child who is currently subject to a school attendance order is being properly educated, then it is assumed that he or she is not, for the purposes of deciding whether an order should be made. Applying for an ESO will often be the proportionate response when parents are not complying with a school attendance order.

7.13 The local authority is under a duty, if an ESO is made, to give 'due consideration' to the 'wishes and feelings' of the child and the parent(s) and this might result in improved home education. However, an ESO imposes a duty on parents to allow the supervisor (the authority) reasonable contact with the child, though this need not necessarily be at the child's home - unless the court imposes a visit at home as a specific condition of the order (paragraph 16 of Schedule 3 to the 1989 Act). Persistent failure to comply with direction given under an ESO is an offence unless the parent can show that he has taken all reasonable steps to comply, or that the direction is unreasonable. But in such cases the authority should be prepared to first make clear to the parents that the result of this may be an application to the court for a care order under s.31 of the Children Act 1989. This makes ESOs potentially very useful in ensuring that a child is suitably educated.

## Care orders

7.14 Whether or not an ESO is made, if it is concluded that the significant harm threshold is met but the parents continue to refuse to remedy the situation, it is highly unlikely that circumstances would make it appropriate to seek an emergency protection order under s.44 of the 1989 Act. However, it may be necessary in certain cases to apply for a care order under s.31. The effect of such an order is not necessarily that the child is removed from the parental home: the local authority is given parental responsibility for the child and can make decisions regarding the child's education even if the child continues to live at home with the parents. If the parents did not comply by causing the child to attend school - assuming the authority has decided he or she should - then the child can be removed from the home into the local authority's direct care. The use of such an order is of course a last resort, and should only be necessary in a very small minority of cases. But the key point for local authorities to bear in mind – and make clear to parents – is that this could be the end result of continued failure to provide suitable education and a continued obstruction of an authority's efforts to ensure that the child receives suitable education.

7.15 It must be emphasised that the department believes that resorting to the use of care orders should only arise very rarely, in the most egregious cases of a failure to provide a suitable education and a persistent refusal by parents to co-operate.

7.16 Statutory guidance on these provisions of the 1989 Act and ss.10 and 11 of the 2004 Act, among other child safeguarding and welfare matters, is set out in [Working Together to Safeguard Children](#).

## 8. Home-educated children with special educational needs (SEN)

8.1 The parents' right to educate their child at home applies equally where a child has SEN. This right is irrespective of whether the child has a statement of special educational needs or an Education, Health and Care Plan (EHC plan), or neither. References here to EHC plans include statements of SEN unless otherwise stated.

8.2 Local authorities must have regard to the statutory guidance in the [Special Educational Needs Code of Practice](#) when carrying out SEN functions. The Code provides information about SEN in relation to home education (paragraphs 10.30 – 10.38). The Code emphasises the importance of local authorities and other providers working in partnership with parents. They must fulfil their statutory duties towards children and young people with SEN or disabilities in the light of the guidance set out in it.

8.3 Local authorities have a duty under s.22 of the Children and Families Act 2014 to identify all children in their areas that have SEN. This includes home-educated children.

8.4 When a child has a EHC plan, it is the local authority's duty to ensure that the educational provision specified in the plan is made available to the child - but only if the child's parents have not arranged for the child to receive a suitable education in some other way. Therefore if the home education is suitable, the local authority has no duty to arrange any special educational provision for the child; the plan should simply set out the type of special educational provision that the authority thinks the child requires but state in a suitable place that parents have made their own arrangements under s.7 of the Education Act 1996. The authority will of course continue to check the suitability of the home education as required by sections 436A and 437 of the 1996 Act, and if at any point it considers that the home education is no longer suitable, it must ensure that the special educational provision specified in the EHC plan is made available.

8.5 Under s.19 of the Children and Families Act 2014, a local authority must have regard to the views, wishes and feelings of the child and parents when exercising its SEN functions. Where parents feel strongly that their child with SEN (with or without an EHC plan) should be educated at home but cannot undertake this themselves, and the local authority agrees that it would be inappropriate for the child to receive the necessary special educational provision in a school, post-16 institution, or state-funded early years setting, the authority have the power, under s.61 of the 2014 Act, to arrange for the special educational provision that the child requires to be provided in the child's home. If a local authority does this for a child with an EHC plan, the plan should clearly explain the arrangements, and the authority will have a duty under s.42(2) to ensure that the education specified in the plan is provided. It is important to distinguish between a situation like this, in which a local authority itself arranges special educational provision in a child's home because it considers education in a school or other institution inappropriate, and a situation in which a child's parents arrange their own home education as described in the paragraph above.

8.6 If a school already attended by a child is a special school and the child is attending it under arrangements made by the local authority, the local authority's consent<sup>12</sup> is necessary for the child's name to be removed from the admission register, but this should not be a lengthy or complex process and consent must not be withheld unreasonably. If the child is to be withdrawn to be educated at home then the local authority, in deciding whether to give consent, should consider whether the home education to be provided would meet the special educational needs of the child, and if it would, should give consent. The Call for Evidence which is being published alongside this draft guidance asks a question about the future of this provision.

8.7 As with other children educated at home, local authorities do not have a right of entry to the family home to check that the provision being made by the parents is appropriate and may only enter the home at the invitation of the parents. However, parents should be encouraged to see a process of engagement with the child as part of the authority's overall approach to home education of pupils with SEN, including the provision of appropriate support, rather than an attempt to undermine the parents' right to home educate. Local authorities should not assume that because the provision being made by parents is different from that which was being made or would have been made in school that the provision is necessarily unsuitable.

8.8 As described in paragraph 8.5 above, local authorities have power under s.61 of the Children and Families Act 2014 to arrange for parents to make the special educational provision that it considers necessary for a child with special educational needs in the form of suitable home education, if the parents' commitment to home education (or other circumstances) makes it inappropriate for their child to attend school. There is no specific duty to provide additional funding in consequence of this but the existence of the power means that any request for such assistance must be reasonably considered. The high needs block of the Dedicated Schools Grant is intended to fund provision for all relevant children and young people in the authority's area, including home-educated children. However this relates only to costs incurred by parents as a result of the special needs. Costs which would be incurred anyway by the parents in providing home education even if there were no special needs (for example the cost of heating), should not be funded, in line with the general position that parents who choose to educate children at home bear the financial responsibility for doing so, since a state school place (or state-funded place) is available for the child.

8.9 In some cases a local authority will conclude that, the home education provision that is being made for a child with a EHC plan does not meet the child's needs. In such cases the procedure to be followed in s.437 of the Education Act 1996 is similar to the same as for other children who are educated at home but are not receiving a suitable education, although the consideration of suitability may well be more complex and need to draw on a wider variety of information, for example educational psychologist reports. Furthermore, the naming of a school in the order must conform with the provisions of s.441.

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<sup>12</sup> Regulation 8(2) of the Education (Pupil Registration) (England) Regulations 2006

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8.10 When a home educated child's EHC plan names a school, some local authorities instruct the school to add the child's name to its admission register without the parent's agreement, with the result that the parent is committing an offence if the child does not attend the school. It is not lawful for a school to do this. It is up to the child's parent whether to arrange for the child to be registered as a pupil at the school.

8.11 Information about the right to request an EHC needs assessment and the right to appeal should be available to all parents including those who are considering home education because they feel that the special educational support being provided in the school is insufficient to meet the child's needs.

8.12 Young people may also be educated at home in order to meet the requirements to participate in education or training until the age of 18. Local authorities should involve parents, as appropriate, in the reviews of EHC plans of home educated young people who are over compulsory school age.

## 9. What do the s.7 requirements mean?

9.1 Section 7 of the 1996 Act requires parents to provide an efficient, full time education suitable to the age, ability and aptitude of the child and any special educational needs which the child may have.

### ‘Suitable’

9.2 Article 2 of Protocol 1 of the European Convention on Human Rights states that:

*"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions."*

9.3 This means that the wishes of parents are relevant. However, it does not mean that parents are the sole arbiters of what constitutes a suitable education. There is no definition of an ‘efficient’ or ‘suitable’ education in English statute law. A court will reach a view of suitability based on the particular circumstances of each child and the education provided.

9.4 However, clearly a local authority must have a basis on which to reach the decisions called for in s.437 of the Education Act 1996 as to whether or not the education being provided is suitable. In the department’s view the term ‘suitable’ should be seen in the following light:

a. it should have a minimum standard which enables a child to participate fully in life in the UK by including sufficient secular education. This means that even if the home education is primarily designed to equip a child for life within a smaller community within this country it should not foreclose the child’s options in later life to adopt some other mode of living, and to be capable of living on an autonomous basis so far as he or she chooses to do so. This view is compatible with the small amount of potentially relevant case law;<sup>13</sup>

b. notwithstanding (a), the home education provision need not follow specific examples such as the National Curriculum, or the requirement in academy funding agreements for a ‘broad and balanced’ curriculum, nor the independent school standards prescribed by the Secretary of State<sup>14</sup>. Conversely, however, if the home education does successfully deliver one or more of those examples then that would constitute strong evidence that it was ‘suitable’ in terms of s.7;

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<sup>13</sup> Eg *Harrison & Harrison v Stevenson* (Appeal, 1981, Worcester Crown Court, unreported) and *R v Secretary of State for Education and Science ex parte Talmud Torah Machzikei Hadass School Trust* (April 1985, unreported)

<sup>14</sup> In regulations made under s.94 of the Education and Skills Act 2008



## Draft

c. local authorities should interpret 'suitable' in the light of their general duties, especially that in s.13 of the Education Act 1996 relating to the development of their community, and that in s.175 of the Education Act 2002 requiring that education functions are exercised with a view to safeguarding and promoting the welfare of children. Whilst these duties are very broadly drawn, it will be evident that if home education provided by a family taught children values or behaviour which was in clear conflict with the values of British society and would also be in conflict with 'Fundamental British Values' as defined in government guidance<sup>15</sup> (for example by seeking to promote terrorism, or advocating violence towards people on the basis of their race, religion or sex), then it would not be in accordance with the authority's general duties to regard that education as being 'suitable'.

However, there is no requirement on parents to actively promote the Fundamental British Values, as there is for schools;

d. the first sentence of ECHR Article 2 of Protocol 1 quoted above confers the fundamental right to an effective education, and relevant case law<sup>16</sup> confers very broad discretion on the state in regulating that law. For example, a local authority may specify minimum requirements as to effectiveness in such matters as literacy and numeracy, in deciding whether education is suitable;

e. although it may well be a good starting point in assessing suitability to assess whether the curriculum and teaching have produced attainment in line with the 'average child' of the same age, it must be borne in mind that the s.7 requirement is that the education is suitable to the child's ability and aptitude. If a child's ability is significantly above or below what might be regarded as 'average' then allowances must be made for that; and similarly the home education may legitimately cater specifically for particular aptitudes which a child has even if that means reducing other content;

f. factors such as very marked isolation from a child's peers, and being educated in an environment which makes it very difficult to learn (for example is very noisy or is otherwise very unsuitable environmentally) can indicate possible unsuitability.

9.5 The department does not, however, believe that it is in the interests of home educated children, parents or local authorities for there to be detailed centralised guidance on what constitutes suitability. This issue should be viewed on a spectrum, and although there will be clear conclusions to be drawn at either end of that spectrum, in between each case must rest on a balance of relevant factors depending on the circumstances of each child.

9.6 Despite this, local authorities should attempt to make clear in their home education policies what overall factors they will take into account and how they will go about

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<sup>15</sup> <https://www.gov.uk/government/news/guidance-on-promoting-british-values-in-schools-published>

<sup>16</sup> Eg *Konrad v Germany* (2006) European Court of Human Rights app. 35504/03

assessing suitability.

## **‘Efficient’**

9.7 An efficient education, within the meaning of s.7, is one which achieves what it sets out to achieve. It is important this concept is not confused with suitability. A wholly unsuitable education can be efficiently delivered – but would still be unsuitable.

## **‘Full-time’**

9.8 There is currently no legal definition of what constitutes ‘full-time’ education, either at school or in the home. Although there is no need for home education to replicate school timetables, it may nonetheless be useful for it to be borne in mind that in state schools children of compulsory school age normally receive around five hours education a day for about 190 days a year. The department’s registration guidance for independent schools sets 18 hours teaching a week as the baseline for registration of the school. However, in home education there is often continual one-to-one contact and education may take place outside normal ‘school hours’ and term time, and the type of educational activity can be varied and flexible.

9.9 However, local authorities should be enabled by parents to assess the overall time devoted to home education of a child in terms of the number of hours per week, and weeks per year so that this information can be set alongside that relating to suitability to ensure that the home education meets the requirements of section 7. The department is not aware that the issue of whether home education is full-time is often a difficult matter for local authorities to reach a conclusion on. As with suitability, the issue as to whether education is ‘full-time’ should be viewed on a spectrum but education which manifestly is not occupying a significant proportion of a child’s life will probably not meet the s.7 requirement.

## Further information

### Children's rights and views

10.1 The United Kingdom has ratified the United Nations Convention on the Rights of the Child (UNCRC). Article 12 of the UNCRC requires states to provide a right for children to express their views and for due weight to be given to those views, in accordance with the age and maturity of the child. This does not give children authority over parents, and a decision to educate a child at home is a matter for parents. However, parents should be encouraged to consider whether home education is likely to be successful if their child is unhappy to be educated in this way, or the provision of suitable home education is not realistically possible.

10.2 Section 17(4A) of the Children Act 1989 puts a duty on local authorities to, so far as reasonably practicable, take into account a child's wishes and feelings with regard to the provision of services for a child in need. However, s.17(4A) does not extend local authorities' functions. It does not, for example, place an obligation on local authorities to ascertain the child's wishes about elective home education, as that is not a service provided by the local authority.

### Disputes between parents

10.3 In some cases two parents (usually divorced or separated, but both having parental responsibility) may disagree as to whether home education is desirable, or at least is being provided properly. In such cases the parent who has custody, whether or not awarded by a court, is normally in effective control of the education provided and whether the child attends school. If the local authority believes that the education being provided is not suitable it should take action in relation to that parent but keep the other parent informed of what is happening.

10.4 Occasionally in such cases, the parent who does not agree with the provision of home education may succeed in getting a child's name entered onto the register of a school. If the child then does not attend that school, both parents may be committing an offence. This situation can arise because the law of education generally assumes that parents will agree on the education of their child. Clearly however it is desirable for matters to be resolved without recourse to the courts and local authorities should attempt to help parents reach a common view on what is in their child's best interests.

## Pressure exerted by schools on parents

10.5 Schools should not seek to persuade parents to educate their children at home as a way of avoiding an exclusion or because the child has a poor attendance record. In the case of exclusion, they must follow the relevant legislation and have regard to the statutory guidance. If the pupil has a poor attendance record, the school and, if appropriate, local authority should seek to address the issues behind the absenteeism and use the other remedies available to them.

10.6 The practice of ‘off-rolling’ pupils through pressure on parents to withdraw them for home education is thought to be a significant contributor to the increase in numbers of home educated children, particularly those aged 14-16, although information on the practice is difficult to obtain. In many cases it is likely that the parent will be unable to provide proper home education, even if willing to attempt this. Local authorities should seek to reach agreements through schools forums which discourage pressure on parents to educate children at home.

## Flexi-schooling

10.7 Although most children educated at home have all the provision made at home, or alternatively partly at home and partly in other ways such as attendance at privately-run part-time tuition settings, it is not essential that this be so. Some children who are educated at home most of the time are also registered at school and attend school for part of the week – perhaps one day a week. The purpose of this is usually to ensure the provision in specific subjects is satisfactory, although it can also help in other ways such as socialisation.

10.8 Schools are not obliged to accept such arrangements if requested by parents. If they do, then time spent by children being educated at home should be authorised as absence in the usual way and marked in attendance registers accordingly. It is not appropriate to mark this time as ‘approved off-site activity’ as the school has no supervisory role in the child’s education at such times and also no responsibility for the welfare of the child while he or she is at home. Some schools have expressed concern that such absence may have a detrimental effect for the purpose of Ofsted inspection, but this is not the case; schools with significant flexi-schooling numbers have had good outcomes from Ofsted inspections. Schools which have flexi-schooled pupils should be ready to discuss with Ofsted inspectors the arrangements they have in place to deal with the requirements caused by such pupils.

10.9 Another form of flexi-schooling available to home educated children aged 14-16 is part-time attendance at further education colleges or other post 16 institutions. Again, this is normally to help with specific subjects and/or socialisation. Colleges may claim funding from the Education and Skills Funding Agency for such provision.

## Unregistered settings

10.10 Local authorities may encounter children who are said to be educated at home but in practice spend large amounts of time at various types of unregistered settings. These are distinct from the part-time settings mentioned previously which are genuinely supplementary to home education; the unregistered settings normally provide most if not all the education received by the child. Such settings fall into two main groups:

a. unregistered independent schools. These settings often serve specific communities, whose members may not always understand the legal obligations of parents to ensure a full time suitable education for their children. The settings are operating illegally, and the department works with Ofsted and local authorities to have them shut down whenever they are found and where necessary or appropriate, to bring prosecutions. If investigations into home education of children suggest the existence of an unregistered independent school, the department would be grateful to receive relevant information. It is not illegal for parents to send their children to such settings. At the level of the individual child however, the local authority must consider whether the education received by the child taken as a whole, at the setting and at home, is suitable, and take action as required;

b. yeshivas, which provide religious education to males in certain Jewish communities, some of them still of compulsory school age. These are not regulated, although the department has recently announced its intention to require that all settings providing a full-time education to children of compulsory school age must register, and that would encompass these settings. The boys aged 13-16 attending yeshivas are normally said to be educated at home for secular subjects. When a local authority is considering whether home education provided is suitable, it should take into consideration the education provided both at home and at the yeshiva, and also the hours attended at the yeshiva.

10.11 Home educated children sometimes attend settings which operate part-time with a specific purpose. An example of these would be madrassahs, which teach children about the Koran; but this category would also encompass sports clubs and dance/drama schools. Parents may say that such attendance constitutes part of the child's overall home education package; and in assessing whether education is suitable and full-time, local authorities should be prepared to take account of such attendance - although if the attendance is for only a short period each week and is of a specialised nature, it may be marginal to the conclusion as to whether the child's education meets the s.7 requirement.

## **Safeguarding – use of tutors by parents providing home education**

10.12 Parents may choose to employ other people to educate their child, though they themselves will continue to be responsible for the education provided. As in all situations where parents themselves employ tutors, the suitability of those tutors in terms of access to children is for the parents to ascertain. Parents will therefore wish to satisfy themselves by taking up appropriate references and ensuring that the tutor has a reasonably recent DBS disclosure certificate, and local authorities should encourage them to do this. A small number of local authorities choose to assist home-educating parents in this task by undertaking Disclosure and Barring Service (DBS) checks free of charge on independent home tutors and the DfE endorses this helpful practice.

10.13 Tutors employed by a local authority, a school, or an agency may also undertake work for home-educating parents, in which case DBS checks ought to have been made already and parents should confirm whether this is so with the body supplying the tutor.

## **Acknowledging diversity**

10.14 Parents' education provision will reflect a diversity of approaches and interests. Some parents may wish to provide education in a formal and structured manner, following a traditional curriculum and using a fixed timetable that keeps to school hours and terms. Other parents may decide to make more informal provision that is responsive to the developing interests of their child. One approach is not necessarily any more efficient or effective than another. Although some parents may welcome general advice and suggestions about resources, methods and materials, local authorities should not specify a curriculum or approach which parents must follow.

10.15 Children learn in different ways and at different times and speeds. It should be appreciated that parents and their children may require a period of adjustment before finding their preferred mode of learning and that families may change their approach over time. Parents are not required to have any qualifications or training to provide their children with a suitable education. It should be noted that parents from all educational, social, religious and ethnic backgrounds successfully educate children outside the school setting and these factors should not in themselves raise a concern about the suitability of the education being provided.

10.16 In discharging their responsibilities in relation to home education, local authorities should bear in mind that they are subject to the Public Sector Equality Duty contained in s.149 of the Equality Act 2010, and should ensure that their policy and practice in relation to home education is consistent with that duty.

## Support for home educators

10.17 When parents choose to home educate their children they assume financial responsibility for their children's education.

10.18 Local authorities do not receive funding to support home-educating families (except in relation to high needs SEN as described above), and the level and type of support will therefore vary between one local authority and another. However, DfE recommends that all local authorities should adopt a consistent, reasonable and flexible approach in this respect, particularly where there are minimal resource implications. As a minimum, local authorities should provide written information (which is also available through the internet) on elective home education that is clear and accurate and which sets out the legal position. Some local authorities may be able to offer additional support to home-educating parents, but this will vary depending on their resources. Examples of additional support include:

- provision of a reading or lending library with resources for use with home educated children
- free, or discounted, admission into community programmes (including local authority owned community and sports facilities)
- access to resource centres (including local school resources where feasible)
- National Curriculum materials and curricula offered by other educational institutions
- information about educational visits and work experience
- providing assistance with identifying exam centres willing to accept external candidates

## National Careers Service

10.19 The [National Careers Service](#) is a free careers service for adults and young people aged 13 and over in England. Advice and guidance can be accessed via the telephone and online. The National Careers Service provides confidential advice and guidance to help children make decisions on learning, training and work opportunities.

## Work experience

10.20 Work experience is not a statutory requirement for children. If a work experience placement is secured for a home educated child, the employer should contact the local authority's education department or education welfare service to find out if a child permit is required.

## 16 to 19 bursary fund

10.21 The [16 to 19 bursary fund](#) is not payable to young people whose parents elect to home educate them after the age of 16.

## Gypsy, Roma and Traveller Children

10.22 Local authorities should have an understanding of and be sensitive to the distinct ethos and needs of Gypsy, Roma and Traveller communities. It is important that these families who are educating their children at home are treated in the same way as any other families in that position. Home education should not necessarily be regarded as less appropriate than in other communities. When a Gypsy, Roma and Traveller family with children of school age move into an area, they should be strongly encouraged to contact the local Traveller Education Support Service for advice and help to access local educational settings. Further guidance can be obtained from the DfE's report: [Improving the outcomes for Gypsy, Roma and Traveller's pupils](#). The [Advisory Council for the Education of Romany and other Travellers](#) is another source of information.

## Looked-after children

10.23 Local authorities acting as corporate parents of looked-after children should bear in mind that they assume the duties of parents under s.7 of the 1996 Education Act to ensure that the child receives a suitable full-time education; and local authorities in whose areas such children are placed by other authorities should take the same steps to ensure that the child is not missing education as they would for any other child resident in their area.



## **Other matters**

### **Other relevant departmental advice and statutory guidance**

*[to be completed in finalised version]*



Department  
for Education

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