



# home education guidance

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The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

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EH1 1YS

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# 1. Introduction

Every child has a right to an education, and it is the duty of the parent of every school age child to provide that education, either by sending the child to school, or by other means.

Home education is a key aspect of parental choice, and is an equally valid choice alongside the option to send a child to school. However, it is a choice which only a minority of parents make. Each individual enquiry about home education, request to withdraw a child from school, or contact between a local authority and a home educating family should be dealt with as fairly, consistently, timeously and accurately as possible.

This guidance is issued under Section 14 of the Standards in Scotland's Schools etc. Act 2000 and must be read in conjunction with that Act and the Education (Scotland) Act 1980. Relevant legislation is set out in section 2.

This guidance applies to home education provided by parents, not to education being provided outwith school by local authorities.

The purpose of this guidance is to set out the legislative position, provide advice on the roles and responsibilities of local authorities and parents in relation to children who are home educated, and to encourage local authorities and home educating parents to work together to develop trust, mutual respect and a positive relationship that functions in the best educational interests of the child.

Guidance was first published in 2004. This revised guidance has been developed following consultation with interested parties.

## 2. Legislative position

This section sets out the legislation relevant to home education. It covers the statutory nature of this guidance, a child's right to an education, the parent's responsibility for providing that education, the need for consent to withdraw from a public school, and a local authority's responsibility to satisfy itself that suitable and efficient education is being provided. It also provides references to case law and international law that are of relevance to home education. Most of the topics covered are expanded upon in later sections of this guidance.

### 2.1 This guidance

#### Standards in Scotland's Schools etc Act 2000 – Section 14

Guidance to education authorities as to home education . The Scottish Ministers may issue guidance as to the circumstances in which parents may choose to educate their children at home; and education authorities shall have regard to any such guidance.

This guidance is issued under Section 14 of the Standards in Scotland's Schools etc Act 2000. This means that education authorities must have regard to the guidance.

### 2.2 The right to an education

#### Standards in Scotland's Schools etc Act 2000 – Sections 1 and 2

1. It shall be the right of every child of school age to be provided with school education by, or by virtue of arrangements made, or entered into, by, an education authority.

2. (1) Where school education is provided to a child or young person by, or by virtue of arrangements made, or entered into, by, an education authority it shall be the duty of the authority to secure that the education is directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.

2. (2) In carrying out their duty under this section, an education authority shall have due regard, so far as is reasonably practicable, to the views (if there is a wish to express them) of the child or young person in decisions that significantly affect that child or young person, taking account of the child or young person's age and maturity.





## 2.4 Duties placed on local authorities

Education (Scotland) Act 1980 – Section 28(1)
In the exercise and performance of their powers and duties under this Act, the Secretary of State <sup>2</sup> and education authorities shall have regard to the general principle that, so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents.
Education (Scotland) Act 1980 – Section 35
(1) Where a child of school age who has attended a public school on one or more occasions fails without reasonable excuse to attend regularly at the said school, then, unless the education authority have consented to the withdrawal of the child from the school (which consent shall not be unreasonably withheld), his parent shall be guilty of an offence against this section.
Education (Scotland) Act 1980 – Section 37(1)



In all their educational responsibilities, local authorities should have regard to the views of parents and the decisions that they make in relation to their child's education. Authorities should seek to support parents in the choices that they make by offering advice, clear and accurate information and resources where feasible.

Section 35 and Section 37 of the Education (Scotland) Act 1980 are relevant in relation to home education. Section 35 stipulates that the consent of the authority is required for a child to be withdrawn from a public school. Section 37 requires an authority to take action where they are not satisfied that an efficient and suitable education is being provided.

## 2.5 Efficient and suitable education

There is no definition of efficient and suitable education in statute law, however, there are two examples of case law from England and Wales which may be of assistance in the interpretation of this:

Harrison & Harrison v Stevenson. Appeal 1981 Worcester Crown Court (unreported)
The Judge defined the outcomes of a suitable education as <ol style="list-style-type: none"> <li>1. to prepare the children for life in a modern civilised society; and</li> <li>2. to enable them to achieve their full potential</li> </ol>
R v Secretary of State for Education, ex parte Talmud Torah Machzikei Hadass School Trust. Judicial review 1985, The Times, 12 April 1985
Mr Justice Woolf said: 'Education is suitable if it primarily equips a child for life within the community of which he is a member, rather than the way of life in the wider country as a whole, as long as it does not foreclose the child's options in later years to adopt some other form of life if he wishes to do so.'



# 3. Withdrawing a child from school

## 3.1 Why parents choose to home educate

Parents choose to home educate their children for many different reasons. Parents do not have to give a reason for choosing home education when requesting to withdraw their child from school. Any reason given should have no bearing on whether or not consent is given, as the authority's interest lies in how the parents intend to educate their children not their reason for doing so. The following reasons are common, but not exhaustive:

- > The wish to follow a particular educational or ideological philosophy.
- > Religious or cultural beliefs.
- > Dissatisfaction with the system.
- > A child's reluctance to go to school.
- > A child's problems when at school, e.g. bullying.
- > Geographical – due to remoteness, or mobility for work or cultural reasons.
- > The wish to deal with a child's additional support needs in a particular way.
- > As a short term intervention for a particular reason.

It may be helpful for the local authority to know if the reason is dissatisfaction with the school, or problems, such as bullying, being faced by the child at school.

## 3.2 Who needs consent?

Under Section 35 of the Education (Scotland) Act 1980, parents of a child who has been attending a public school<sup>f</sup> must seek the local authority's consent before withdrawing their child from that school, and the authority must not unreasonably withhold consent. It should be noted that while consent is needed for withdrawal from school, consent is not needed to home educate in itself.

Consent is not needed in the following situations:

- > The child has never attended a public school.
- > The child has never attended a public schoolTw 165nioSsatt.42a (educaular way)92(. )JTJ ET EMC 3MC

Although there is no statutory duty upon parents to inform the local authority that they are

#### Is there evidence of the intention to provide efficient and suitable education?

- > If information exists casting doubt on whether an efficient and suitable education can be provided, or if the parent has failed to provide outline proposals on the proposed educational provision, the authority should seek to gather any relevant information that will assist them in reaching a decision. This should include seeking further information from the parents about their plans for education provision. Parents should be given the opportunity to address any specific concerns that the authority has. The child should also be given the opportunity to express his or her views.
- > If no evidence exists of reasonable grounds to withhold consent, and parents have provided some indication of their educational objectives and proposed resources, consent can be granted immediately.

#### Timescales

- > The aim should be to issue a decision within 6 weeks of the receipt of the original application.
- > The majority of applications can and will be dealt with well within this timescale.
- > In a small minority of cases, where information has to be sought from various sources, it may not be possible for a decision to be issued within 6 weeks. The parent should be kept informed of the progress of the application, the reason for any delay, and the likely timescale to reach a decision. The authority should seek to issue a decision as soon as possible.
- > Authorities should have regard to any problems a child is experiencing at school, and should endeavour to issue as quick a response as possible in those cases where a child may be suffering distress or experiencing some kind of problem as a result of continued attendance at school.

#### Points to bear in mind

- > The local authority may not unreasonably withhold consent. The authority should notify the parents in writing of their decision, setting out reasons and the grounds for refusal if consent is withheld.
- > If consent is withheld, the parents should be given the opportunity, within a reasonably practicable period, to address the grounds for refusal and resubmit their request for reconsideration.
- > In reaching a decision the authority may wish to have regard to the suggested characteristics of an efficient and suitable education set out in Section 6 of this guidance. However, authorities should bear in mind that, in these early stages, parents' proposals may not be detailed and they may not yet be in a position to demonstrate all of the characteristics suggested.

- > In the period between receipt of an application to withdraw the child and a decision being issued, the authority should take a reasonable approach to attendance procedures. In most cases it would be inappropriate to initiate or pursue attendance procedures in respect of a child awaiting consent to be withdrawn from school.
- > Local authorities should acknowledge that potential home educators come from all social, economic, racial and religious backgrounds, and that these factors should not bear upon the authority's decision.
- > Parents are not required to have any qualifications or training to home educate their children.

### 3.4 Appeals by parents against a local authority's decision

There is no statutory right to appeal against an authority's decision to withhold consent to withdraw a child from school. However, all decisions should be reviewed internally by local authorities on request. Local authorities should provide parents with details about their complaints procedure. Decisions made by authorities under their statutory powers are also generally subject to external review by the Court of Session through the judicial review process. Some local authorities have mediation services and the existence of these should be made known to home educating families. Parents may also choose to pursue the matter with the Scottish Public Services Commissioner (Ombudsman).

### 3.5 Movement between local authority areas

Some families may have lifestyles which mean they move or travel, sometimes seasonally, between local authority areas, sometimes for work or cultural reasons, for example Gypsies and Travellers. The same considerations for consent to withdraw from school, and for ongoing contact, apply to these families. Some Traveller families have arrangements in place whereby children are on a school roll and attend for part of the year, using means other than home education to maintain continuity in learning while travelling. Only where children do not attend any school, and where the education is provided predominantly by the parents, should the arrangement be considered to be home education.

### 3.6 Flexi schooling

Local authorities may occasionally receive a request to withdraw a child part time from school, e.g. for the child to attend school only on certain days, or for certain subjects. The feasibility of each request should be considered on its own merit, while taking into consideration that under Section 28 of the Education (Scotland) Act 1980 so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents. Ultimately, however, it is a decision for each local authority and school as to whether they can support such an arrangement.









## 4.2 Contact

We recommend that authorities should ordinarily make contact on an annual basis with those families they know to be home educating in their area. This annual contact is not a statutory requirement. However, it is a suggestion as to how authorities may reasonably inform themselves in order to fulfil their duty to serve a notice on any parent who is not providing efficient and suitable education.

We recommend that contact is made in writing initially to the family, seeking a meeting or requesting an updated report. The primary purpose of the contact should be for the authority to satisfy themselves that suitable and efficient education is being provided. This can be done either through a meeting, at a mutually agreed location, or through other means, e.g. the submission by the family of written, recorded or electronic material. Authorities should not be prescriptive about the format in which information can be submitted. The important factor is whether the information can demonstrate that suitable and efficient education is being provided.

Following this contact, the local authority should write to the family letting them know the outcome, i.e. whether or not the educational provision was seen to be suitable and efficient. If there was no problem with the educational provision, there will be no need for further contact until the following year. Where there are concerns about the efficiency or suitability of the education being provided, the local authority should make the exact nature of these concerns clear to the parent.

If, from whatever source, an authority becomes aware of concerns about the home education of any child, outwith the normal contact time, they will need to gather the necessary information in order to form a view on whether those concerns are justified or whether the parents are providing an efficient education suitable to the age, ability and aptitude of the child.

### 4.3 Access to the child and home

It is important to acknowledge that learning takes place in a wide variety of environments and not simply in the home. Where the education is taking place in the home, it may be thought desirable for a local authority to have the opportunity to see the child in that learning environment, to enable them to see the provision at first hand, and thus determine whether suitable and efficient education is being provided. The authority does not, however, have a right of access to the home and the child. Trusting relationships may need time to develop before a parent is willing to invite an officer to visit. Where a parent elects not to allow access to their home or their child, this does not of itself constitute a ground for concern about the education provision. Depending upon the circumstances, there may be occasions when a denial of access raises child protection concerns, in which case the general principal set out in section 4.6 should apply.

Although it is recognised that the learning environment can have a bearing on the effectiveness of learning, local authorities should, in the vast majority of cases, be able to discuss and evaluate the parents' educational provision by alternative means. Parents might prefer, for example, to write a report, provide samples of work, either in hard copy or electronically, or provide evidence in some other appropriate form.

### 4.4 Exceptional circumstances

Where the authority has concerns about the education provision which are not allayed by the presentation of written or alternative forms of evidence, and ongoing dialogue, and the only way the authority can clarify whether suitable and efficient education is being provided is to seek access to the home environment, then they may request to do so. However, the authority must have demonstrable grounds for concern and must outline those grounds to the parent when requesting access to the home. If, in these circumstances, the parent refuses to allow access to the home, the authority might reasonably conclude that they have insufficient information to satisfy themselves as to the efficiency and suitability of education provision, and serve a notice on the parent under Section 37 of the 1980 Act.



#### 4.5 Making an attendance order

A parent's wish to educate a child at home should be respected and, where possible, effort should be made to resolve issues about provision by a process of ongoing dialogue before Section 37 is invoked. Only in extreme cases should notice be served, i.e. where

- > The education is clearly not efficient and suited to the age, ability and aptitude of the child, and this situation is unlikely to be resolved by further ongoing dialogue, or
- > The authority has made every effort to secure the information required to enable it to satisfy itself that the education is efficient and suited to the age, ability and aptitude of the child, and that information has not been provided by the parent.

Under Section 37, notice will allow between 7 and 14 days for the parent to provide the education authority with whatever information they require to satisfy themselves about the suitability of the education. The parent may choose to do this by meeting with the authority in person, or by supplying the information in writing. The authority should make an attendance



### 5.3 Practical support and resources

Authorities are not legally obliged to provide any resources for home educated children. However, they may choose to do so, particularly where there are minimal resource implications.

Some of the ways in which authorities might choose to support home educating families include:

- > Providing general advice.
- > Allowing access to learning centre resources.
- > Allowing access to school resources where feasible.
- >



## 6.2 Suggested characteristics of efficient and suitable education

There is no definition of suitable and efficient education set out in primary legislation. However, as set out in section 2, the following examples of case law may be helpful in forming definitions:

Harrison & Harrison v Stevenson. Appeal 1981 Worcester Crown Court (unreported)
The Judge defined the outcomes of a suitable education as 1. to prepare the children for life in a modern civilised society; and 2. to enable them to achieve their full potential
R v Secretary of State for Education, ex parte Talmud Torah Machzikei Hadass School Trust. Judicial review 1985, The Times, 12th April 1985
Mr Justice Woolf said: 'Education is suitable if it primarily equips a child for life within the community of which he is a member, rather than the way of life in the wider country as a whole, as long as it does not foreclose the child's options in later years to adopt some other form of life if he wishes to do so'.

In their consideration of parents' provision of home education, authorities may reasonably expect the provision to include the following characteristics:

- > Consistent involvement of parents or other significant carers.
- > Presence of a philosophy or ethos (not necessarily a recognised philosophy), with parents showing commitment, enthusiasm, and recognition of the child's needs, attitudes and aspirations.
- > The opportunity for the child to be stimulated by their learning experiences.
- > Involvement in a broad spectrum of activities appropriate to the child's stage of development.
- > Access to appropriate resources and materials.
- > The opportunity for an appropriate level of physical activity.
- > The opportunity to interact with other children and adults.

School education is changing with the introduction of the Curriculum for Excellence, which is not primarily about prescriptive curriculum content or structures. Rather it is about focussing on the outcomes that learning and teaching will achieve for young people. This chimes well with the philosophy of many home educating parents, and local authorities may also find it useful to consider the principles which govern Curriculum for Excellence as characteristics of suitable and efficient education.





## 7. Information for parents

### 7.1 Education Maintenance Allowances (EMAs)

Home educated children are eligible for EMAs, subject to the same criteria as set out for school educated children. EMAs are available to eligible young people who are undertaking full-time non-advanced level study by home education. The EMA programme is administered by the local authority in which the home education is based. Applications should be made to the local authority. Students applying for an EMA as a home educated student must have a history of home education prior to reaching their official school leaving date. The Scottish Government publish updated guidance annually in March. Parents should refer to the latest guidance for more details.

### 7.2 Examinations for home educated children

There is no legal requirement for children to sit a particular set of examinations. If parents want a child to take a particular qualification, they should investigate thoroughly whether, and how easily, their child will be able to access examination and assessment arrangements. The internal assessment component of many qualifications such as Standard Grades, National Qualifications, GCSEs and A Levels can restrict the certification of external candidates. For instance, many National Qualifications courses at Intermediate 1 and 2, Higher and Advanced Higher require candidates to pass unit assessments as well as an external assessment to achieve a course award. These are not, however, the only types of qualification available and parents may wish to investigate alternative options which may be better suited to home education. Some study options are set out below.

Authorities are not required to meet any costs associated with home educated candidates taking examinations or other qualifications. Authorities should, however, where circumstances allow, take a reasonable approach and make available any resources or support that they can offer, and give information about alternative qualifications and the arrangements needed for children to take them, where applicable.

### 7.3 Study options for educational qualifications

#### Enrolment at a Further Education College

Home educated young people are eligible to be considered for further education college courses. As with school pupils, it is a matter for the college concerned whether to enrol a home educated young person. Courses are usually part-time, though colleges may in exceptional circumstances enrol young people under the age of 16 on to full-time programmes.

Enrolment at college has the advantage that all the work and entry for qualifications is organised by the college, but it does require at least some attendance at classes which will not appeal to all home educating families. If a student enrolls at a college, their parents will be liable

to pay all of the course fees themselves unless the education authority is willing to provide funding. Colleges also have the discretion to waive fees, which they tend to do for low income





# Other useful contacts

## Disclosure Scotland

### Contact:

Disclosure Scotland, PO Box 250, Glasgow G51 1YU

Tel: 0141 282 5000 Fax: 0141 282 5050

Email: [info@disclosurescotland.co.uk](mailto:info@disclosurescotland.co.uk)

Website: [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)

Learning and a970u04o-0.08 Scotland

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