

Children Schools and Families Bill 2009

Briefing Pack and Resource Document

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This pack is intended to help inform and assist MPs, Peers and their assistants to understand fully the impact upon Elective Home Educators and their children of the Children, Schools and Families Bill 2009 should it enter into statute in its current form.

It is compiled and presented by a number of people with independent skills and expertise. They also have between them over 50 years of personal home educating experience.

Introduction from Alison Sauer

The so called “Badman Review” and subsequent Children Schools and Families Bill have been the most significant things to happen in the recent history of Elective Home education. The government has publicised the Bill as supportive to Home Education and the children who are home educated. Sadly I, and many others, believe the very opposite to be true.

I have many years experience both as a home educator myself, as a major participant in the publication of the Scottish Statutory Guidelines for home education and, most importantly, as someone who has trained staff from over 20% of England’s Local Authorities in this very subject.

It was deeply saddening that the review did not take account of the considerable success of home education. Instead it has resulted in a Bill which turns the duty of all parents to provide an education for their children, either by attendance at school or otherwise, on its head and considers all parents to be guilty of not providing a suitable education unless they can prove otherwise. Indeed it wants that proof only on the Local Authorities’ own terms. It introduces an annual licensing scheme – effectively “permission” to home educate. Worst of all it seems to utterly forget the whole point of the exercise – the wellbeing and education of the child!

We should learn from other parts of the world, for example New Zealand where a not dissimilar scheme was introduced a few years ago and where just this year they have abandoned this scheme as a waste of both time and money. This expensive exercise had proven that those families where there were problems were already known about and that such a stringent inspection regime not only intimidated and alienated home educators but was simply not an effective or efficient method of supporting and providing for those in need – a small minority of home educators.

We have a system in place currently which does work, however it is frequently misunderstood and not followed. Better understanding of the law and the Authority’s duties and powers alongside a better relationship with the home educating community is, in reality, the only way forward.

Alison Sauer
January 2010

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CSF Bill – Summary of Home
Education Provisions and their
Impact

Betsy Anderson & Imran Shah

CSF Bill – Summary of Home Education Provisions and their Impact

Schedule 1 contravenes two of the fundamental principles of the Children’s Plan: Launching Brighter Futures, which was launched by the government in December 2007. These are:

- *Government does not bring up children – parents do – so government needs to do more to back parents and families.*
- *Services need to be shaped by and responsive to children, young people and families, not designed around professional boundaries.*

GENERAL FEATURES OF SCHEDULE 1

Under Schedule 1 to the Children, Schools and Families Bill (Schedule 1) local authorities will have a duty to maintain a register of all home educated children within their area. This duty to keep a register will give local authorities the power to refuse parents permission to home educate, and to curtail the practice of home education, without regard to the education being provided and without regard for the best interests of the child.

Home educating parents will not have an affirmative duty to register their children, but a local authority’s first step can be to serve a School Attendance Order on any unregistered HE child. Local authorities will have many powers to refuse or revoke registration, and then issue a School Attendance Order because of the unregistered status that they have thus created. Parents who do not comply with a School Attendance Order will be guilty of a criminal offence. Parents served with such an order will no longer be able to use the defence that they are providing a suitable education.

Under Section 7 of the Education Act 1996, it is the parents’ duty, not the local authority’s, to ensure that children receive a suitable education. Parents may choose to provide that education “otherwise” rather than delegating that duty to a school. Schedule 1 imposes constraints on how parents exercise this duty, should they choose to educate their children at home. Schedule 1 is inconsistent with the Children’s Plan and the Children Acts, favours administrative protocol over parents’ freedom to choose the form of education for their children, and represents a shift in power from families to civil servants.

LOCAL AUTHORITY POWERS EXTENDED

Schedule 1 will give local authorities extensive powers to refuse or revoke registration. They may refuse or revoke registration:

- If a parent does not immediately apply for registration, even though there is no legal requirement for them to do so.
- If a parent does not submit a plan for the next year's education on time, or in sufficient detail, or in the authority's designated format.
- If a parent deviates from the educational plan that they have provided to the local authority, even if by doing so they have improved the education being provided.
- If a family's circumstances change during the year. The local authority might, e.g., decide it is a material change if a child is found to have special needs, or if a family changed their educational approach to one that was more workable or effective.
- If an authority, or any other authority in England has ever in the past denied an application to register a child.
- If parents object to the local authority entering their home on a routine visit.
- If parents object to the local authority questioning their child with no parent or carer present. Schedule 1 gives parents the right to object to their child being questioned alone, but then permits registration to be refused or revoked if they do so.
- If the local authority determines that the parents are demonstrating a "failure to cooperate" with any aspect of the local authority's monitoring process.
- If registration lapses, which happens automatically after one year.
- If a parent applies to register in order to stop the school attendance order process, the process stops. However, the LA can then refuse to enter the child onto the home education register, and serve another School Attendance Order.

In addition, the Secretary of State will be empowered to impose further regulations and technical requirements, without parliamentary debate, and thus will be able to set even more conditions upon parents' freedom to home educate.

SCHEDULE 1 AND THE CHILDREN'S PLAN

Schedule 1 contravenes two of the fundamental principles of Children's Plan: Launching Brighter Futures, which was launched by the government in December 2007. These are:

- *Government does not bring up children – parents do – so government needs to do more to back parents and families.*
- *Services need to be shaped by and responsive to children, young people and families, not designed around professional boundaries.*

However, under the terms of Schedule 1:

- Regulations will be issued providing for a right of appeal. Therefore the appeal process that is created will not be subjected to Parliamentary scrutiny to see if it is fair, impartial and just.
- The local authority will be able to revoke registration if it considers that the education being provided is not suitable. It will also be able to refuse or revoke registration if the parents violate a number of administrative protocols, regardless of whether the education being provided is suitable or not. The net effect will be to make administrative procedures central to a local authority's consideration, not the needs of the child.
- There is no statutory requirement for the local authority to consider whether or not it is acting in the best interests of the child.
- There is no general requirement for the local authority to consider the suitability of the education being provided, although suitability underpins parents' right to choose to educate their children otherwise than at school. Indeed, local authorities are expressly prohibited from considering the actual education in deciding whether to issue a School Attendance Order.
- There is no requirement for the local authority to work in partnership with HE families to improve the education being provided if there are concerns, as opposed to ordering the children to attend school.
- There is no assertion or recognition that the parents are responsible for the education of their child.
- There is no requirement for local authorities to provide any services or resources for EHE families.

SCHEDULE 1 AND THE EDUCATION ACT 1996

Schedule 1 is inconsistent with the spirit and nature of the Education Act 1996 thus:

- There is no explicit assertion that it is the duty of parents to educate their children either by regular attendance at school or otherwise. Instead there is a diminution of the freedom and powers that parents have to exercise their duty by choosing to home educate.
- Local authorities are not required to consider the suitability of the education being provided whenever they consider refusing or revoking registration, and are instructed not to consider it when they issue a School Attendance Order. They are granted broad powers to refuse permission to home educate based only on whether administrative procedures have been followed.
- The issue of suitability of the education parents provide to their children is removed from judicial consideration. Courts instead are directed to enforce a School Attendance Order against any unregistered home educated child.

SCHEDULE 1 AND THE CHILDREN ACT 1989

Schedule 1 is inconsistent with the spirit and nature of the Children Act thus:

- There is no requirement for the local authority to consider the needs, welfare and interests of the child as paramount.
- There is no recognition of the importance of family life to the welfare of a child.
- There is no requirement for the local authority to work in partnership with HE families.
- There is no requirement for the local authority to consider the needs of the child with regards to race, culture, religion, gender, disability, or special needs, or any other factors that may be relevant to the well-being of the child.
- There is no affirmation of the “No Order” principle, that an order should only be sought as a last resort.
- The consideration for the welfare of the child is poorly defined or absent. This is inconsistent with the welfare checklist contained with the 1989 Children Act and with the other acts that shape children’s services. The authority-centred Schedule marks a paradigm shift from the child-centred, family-focused acts that sprang from and were shaped by the Children Act 1989 (ECM, the Adoption Act, CA 2004, the Leaving Care Act, the Children’s Plan).

SUMMARY

The powers enshrined in Schedule 1:

- *Curtail the freedom of parents to educate their children otherwise than at school.*
- *Are inconsistent with the Children Acts.*
- *Are inconsistent with the Children’s Plan.*
- *Create a conflict between the local authority and parents in who is ultimately responsible for the provision of education, and who is answerable to whom.*
- *Represent a shift in power from families to civil servants.*

Betsy Anderson; Imran Shah.
31 Dec 2009

For additional detail or reference to specific provisions of Schedule 1 to the CSF Bill, see the in-depth analysis of Schedule 1 available here:
http://www.takebackyourfreedom.co.uk/clause26_full_analysis.htm

Detailed Analysis of the proposed
Law with respect to Elective Home
Education

Betsy Anderson

SUMMARY

The Children, Schools and Families Bill (the Bill) was introduced in the House of Commons on 19 November 2009. Clause 26 gives effect to Schedule 1 of the Bill (Schedule 1), inserting new sections in the Education Act 1996 (EA 1996), which impose new duties on English local authorities (authorities) in relation to electively home-educated (EHE) children. (Explanatory notes to Bill, par 113.)

Schedule 1 grants new powers to local authorities which create a fundamental conflict between those authorities and parents' right to home educate as established under Section 7 of the Education Act 1996. The Schedule awards an unreasonable level of control and unchecked discretion to local authorities, which effectively restrict, and in many cases prevent parents from exercising their right to home educate.

In a radical reverse from current policy, which recognises that parents are entrusted with their children's education and focuses on those situations where help is needed, Schedule 1 outlines a hugely expensive bureaucracy that will affect every home educating family and impose an inequitable and unworkable relationship between parents and the state. The precedent of imposing the government's will over parents' choices concerning how to raise their children, and enforcing local authority access into the family home to question individual children without need for evidence of wrongdoing, has human rights implications for all families.

This oppressive scheme is premised on misconstrued evidence. Properly construed, the underlying evidence actually demonstrates a lower incidence of safeguarding problems or educational failures in home educating families than in the schooled population. Rather than irrevocably changing the nature of home education through new legislation, both government and families would benefit from promoting home education and enforcing existing legislation and the current elective home education guidelines.

Schedule 1 uses the misnomer "registration" for a process under which parents must obtain permission from the authority in order to home educate. Schedule 1 treats home education prejudicially with the actual educational aspect made all but irrelevant. Local authorities are empowered to order home educated children into school for any transgression of the registration scheme, however minor or petty, and the parents are criminalised if they do not obey. Courts are affirmatively prevented from considering the quality of the child's home education, and reduced to enforcing any decision an authority may make to prevent registration for home education.

Under the proposed Schedule 1:

- Whilst not legally obliged to, if a parent does not apply immediately for registration on the authority's home education register the child can automatically receive a school attendance order.
- If a parent is educating brilliantly and the child has 20 GCSEs, but is not on the register, the child can receive a school attendance order.
- If a parent does not submit a plan for the next year's education on time, or in sufficient detail, or in the authority's designated format, the child can receive a school attendance order.

- If parents do not adhere to their submitted plan, the child can receive a school attendance order. It is irrelevant whether the education provided was an improvement on the original plan.
- If a family's circumstances change during the year, the child may receive a school attendance order.
- If a parent applies to register to stop the school attendance order process, the process stops. But then the authority can refuse to enter the child onto the home education register, and serve another school attendance order.
- If an authority once denies an application to register a child, it will have continuing power to deny any future applications concerning that child.
- If the parents object to the local authority entering their home on a routine visit, the child may receive a school attendance order.
- If parents object to the authority questioning their child on his or her own with no parent or carer present, as Schedule 1 allows, the authority can revoke the child's registration and serve a school attendance order precisely because the objection was made.
- If the parents do not comply with any school attendance order entered according to Schedule 1, they may be guilty of a criminal offence.
- The Secretary of State will be empowered to impose further regulations and technical requirements, beyond parliamentary debate, setting even more conditions upon parents' ability to home educate.

DETAILED ANALYSIS

1. Section 7: The Right to Electively Home Educate

The right of parents to home educate their children is established under Section 7 of EA 1996. In fact, Section 7 puts the responsibility to provide education to children upon the parent, *not* the authority:

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

(a) his age, ability and aptitude, and

(b) to any special educational needs he may have,

either by regular attendance at school or otherwise.

The **parent** has the obligation to secure the child's education, and the right to choose to provide that education at home. The parent can choose to **delegate** the provision of their child's education to a school. **Schedule 1 treats the law as the opposite**, as if it were the authority's right to choose whether a parent can provide their child's education otherwise than at school.

For ease of reference, and to track the language used in Schedule 1, the standard for education in accordance with Section 7 will be referred to as "suitable."

2. The Background Context

These disproportionate and discriminatory provisions have been created without justifiable cause or context. Parents were never before required to register home educated children, and authorities never had educational monitoring responsibilities for all home educated children.

In 2007 DCSF issued Elective Home Education Guidelines (the EHE Guidelines), which showed an understanding of home education practice, but DCSF never tried to positively implement them. DCSF could simply have made the EHE Guidelines legally enforceable as guidance, or it could have trained local authorities on how to apply them.

Instead, the government commissioned Graham Badman to conduct an "independent" review of elective home education. After the Badman Report was released on 11 June 2009, such serious questions were raised that the Select Committee conducted an inquiry with respect to the report. Without waiting for the result of the Select Committee inquiry, or for the report of a DCSF consultation concerning suggestions made by Badman to register and monitor home educated children, the government rushed to present Clause 26 and Schedule 1 within the Bill.

Schedule 1 outlines a scheme that goes beyond the Badman recommendations, puts enormous demands on authorities unfamiliar with home education, overrides parents' right to home educate, and threatens to destroy home education in its current form.

Substantial statistical flaws in the Impact Assessment for Schedule 1's Home Education provisions have been discussed elsewhere. (See eg Michael Crawshaw's November 2009 analysis; Ciaran McHale's 2 December 2009 letter to the IOC.) The available evidence indicates that the vast majority of EHE parents are providing suitable education for their children, and that there are no substantial inherent safeguarding risks to home education

Indeed, studies in the UK and worldwide have nearly universally found that home education is effective, that home educated children generally outperform schooled children when tested against them, that home educated children do not suffer from lack of socialisation, and that they tend to have higher self esteem than schooled children. **There has been no evidence, anywhere, that home educated children as a category are prone to abuse.**

Home education is effective, because it allows parents to tailor the education to the interests and needs of each child, to allow children to learn independently, through experience rather than just through textbooks, and it enables flexibility to adapt the approach as the child's or family's needs or experience change.

Home education takes place in many places besides the home. Home educated children visit museums, historical sites, galleries, and sports facilities. They participate in social, sport and learning activities with other home educated children, and in after-school clubs. They learn through investigation, the internet, documentaries, independent reading, and living in the community. They socialise with children of both sexes, of all ages, and adults.

Home education has literally saved the lives of children who were badly bullied at school. It has allowed special needs children to receive the one-to-one attention that facilitates learning and stability. Home education has allowed children who were not learning in the large classroom at school, to learn at home. It has allowed gifted children to stretch to their abilities. Home education has allowed children to experience the joy of learning when they can learn what they enjoy, at their own pace, in the way that suits them best.

3. Discussion of Provisions of Schedule 1

3.1. Authorities' duty to maintain a register.

The new home education scheme is premised on "registration." It gives authorities, not parents, the duty to register. Local authorities are required to maintain a register for the purpose of monitoring home educated children (19A(1)).

As discussed below, the term "registration" is a misnomer and misleading. The term to "register" implies an administrative task without judgment or discretion. EHE "Registration" as set forth in Schedule 1 in fact imposes a requirement that parents **receive permission** from their authority in order to exercise their Section 7 right to home educate, and the **authority can deny registration for many reasons that have nothing to do with whether or not the education is suitable**

3.2. Unregistered EHE children as Children Missing Education.

The authority has a duty to identify home educated children who are not registered. (436ZA(3)) of EA 1996). _An unregistered home educated child will be considered a Child Missing Education. The child will then be subject to service of a school attendance order (SAO). (437(3A).)

3.3. Enabling of regulations.

Regulations to be issued by the Secretary of State will specify how a parent's application for registration should be made and what it must include (19C4), as well as other matters (see 3.5.4; 3.6; 3.10 below).

Regulations will have enormous impact upon home education, although they will be beyond legislative debate. The intent appears to be intrusive, prescriptive and limiting of both parents' rights and potential controls on the exercise of authorities' discretion to proscribe home education.

3.4. School attendance orders.

3.4.1. Current standard for SAOs.

Under the current EHE Guidelines, authorities should make informal inquiries with parents about the education being provided (2.8), and can serve a **school attendance order only if there is reason to believe that a suitable education is not being provided** (2.7) and if the authority has taken all reasonable steps to try to resolve the situation (2.10).

3.4.2. Proposed SAO standard for EHE children.

Under Schedule 1, if the authority learns of a home educated child who is not on the register (although the parent has no affirmative duty to register), the authority can immediately serve a school attendance order on the parent. 437(3A) of EA 1996 directs the authority to serve an SAO if a home educated child is not registered and it appears "expedient" for the child to attend school. There is no requirement that the authority provide an opportunity to register. Schedule 1 directs the authority to "**disregard any education being provided to the child as a home educated child**" in deciding whether it is expedient for the child to attend school (437(3B)).

Presumably regulations will define "expedient," **but Schedule 1 makes clear that neither suitability, nor anything about the education, may be part of the decision.**

Schedule 1 thus not only eradicates authorities' current duty to make inquiries with respect to the child's education, it affirmatively prohibits the authority from considering a child's actual home education in deciding whether to order the child to attend school.

This is completely illogical if the purpose of the register is to keep track of which children are home educated or to ensure quality of education provision at home. It is inconsistent with any government commitment to uphold parents' rights to home educate. These provisions can only be meant actively to prevent the practice of home education, regardless of its worth, and to discriminate against parents' Section 7 rights to choose to educate their children at home rather than delegate the duty to educate to a school.

3.4.3. Standard for SAO for non-EHE children.

The **direct discrimination** against home educated children continues in other provisions. For children **other than home educated children**, who are educated "otherwise" than at school (such as in a pupil referral unit), the authority should take steps **only if it appears that the child is not receiving suitable education** (437(A1) of EA 1996). Then, the authority should serve a notice on the parent giving a time period for the parent to satisfy the authority that the child is receiving suitable education (437(B1) of EA 1996). Only if the parent fails to satisfy the authority that the non-EHE child is receiving a suitable education, should the authority determine if it is expedient to serve an SAO. (437(3) of EA 1996.)

3.4.4. Application for revocation of SAO.

After an SAO is entered, a parent can apply to an authority to have the SAO revoked on the ground that arrangements have been made for the child to receive a suitable education otherwise than at school – **but only if the education "otherwise" is provided in a pupil referral unit, and not through home education.** (442(D1) of EA 1996.) For EHE children, the only consideration remains whether the child is registered on the authority's home education register. (442(B1) of EA 1996.)

3.4.5. Stopping the SAO process.

Schedule 1 purports that an EHE parent can stop the SAO process by applying for registration. (442(B1) of EA 1996; see also explanatory notes 135: "a parent of a home educated child could respond to a notice by applying for registration, thus stopping the school attendance order process.") However, Schedule 1 also -- in completely circular logic -- gives an authority the discretion to refuse an application to register if an SAO is in force in respect of the child. (19B(3) and (6).)

Moreover, in many, often spurious, circumstances (discussed further below) having nothing to do with the child's actual education, the authority can prevent a child from appearing on the register, by denying a parent's application to register or revoking a prior registration. The authority, that is, **can create the condition that empowers it to serve an SAO.** A parent might apply to register to stop the SAO process, but the authority can then deny or revoke registration, and serve another SAO because the child "is not registered on their home education register" (437(3A)(a)), disregarding "any education being provided to the child as a home-educated child" (437(3B)).

This is a grossly unfair process that makes it impossible to obtain fair consideration of the home education or to counter the authority's decisions with respect to the child.

3.4.6. Deprivation of judicial review of SAO/Criminalisation of EHE parents.

Schedule 1 then denies EHE parents – but not parents of non-EHE children educated “otherwise” -- their day in court. The authority can apply to a court to enforce an SAO. If the parent of a *non-EHE* child educated “otherwise” than at school fails to comply with an SAO, the parent will not be guilty of a criminal offence so long as the parent shows that the child is receiving a suitable education. (443(A1)(a) of EA 1996.)

However, a home educating parent who fails to comply with an SAO is guilty of a criminal offence on a strict standard of whether the child is registered on the authority's home education register. (443(A1)(b) of EA 1996). **The court is never permitted to consider the issue of whether the home education provided by the parents is suitable.**

This scheme violates parents' rights under Section 7, discriminates against home educating parents, and imposes enormous inequities. It also guarantees irrevocably to put relationships between home educators and local authorities on distrustful, antagonistic and difficult grounds.

3.5. Authorities' Right to Refuse Entry on the Home Education Register

The term “registration” implies an administrative book entry. The “registration” of home educated children under Schedule 1, however, imposes a requirement that parents obtain permission from their authority in order to home educate. This undermines the legal right that parents have under Section 7 to choose the method by which their child is educated. It is in fact a licensing scheme, and it is deceptive, misleading and incorrect to refer to it as “registration.”

In the guise of “registration,” authorities are given the power to deny permission to home educate by refusing to make an entry in the authority's home education register when a parent applies to register. Authorities also have power to revoke a registration already made. These powers range from specific stipulations to refuse permission for “welfare” concerns (see 3.5.1 below), to the ability to practice broad discretion on the part of authorities (see 3.5.2 and 3.5.3 below).

3.5.1. Mandatory denial of EHE registration.

The local authority must refuse registration, or revoke a prior registration, if “the authority consider that it would be harmful to the child's welfare” to become or continue to be a home-educated child. (19B(4) and (7) (refuse to register); 19F(1)(d) (revoke prior registration)).

The standard “harmful to the child's welfare” is not defined. The explanatory notes (116) give the example of a child who is subject to a child protection plan. However, the loose “harmful to welfare” standard might also allow the authority to refuse registration if, for instance, they felt the child should have the social life of school, or if they did not like a family's lifestyle.

Under current law, welfare issues are separate from education issues, and that is appropriate. Authorities already have powers to act when there are welfare concerns regarding a child. (Children Act 1989.) No special provisions are needed with respect to home educated children. Welfare must not be conflated with education.

3.5.2. Discretion to deny or revoke EHE registration.

The local authority has discretion to deny registration, allowing it to choose whether or not to register a home educated child, under other circumstances (19B(3), (6) and (8); explanatory note 116). None of the sections granting discretion to refuse initial registration has anything expressly to do with whether the education is suitable. Suitability is only one of many bases upon which authorities can revoke registration.

19B(8) gives the local authority discretion to deny an application for registration "if the authority consider that information that has been provided in connection with the application is incorrect or inadequate in a material respect (whether or not it was so when it was provided)." 19F(b) gives the authority the power to revoke a previous registration on the same basis.

However, while the authority must give the parent notice with reasons if they decide not to register the child (19B(5)) or to revoke registration (19F(3)), **the authority has no obligation to ask the parent for additional information, and the parent has no right to supplement the information or contest the refusal.** If the authority decides that parents did not give enough information or that some of it is inaccurate, it can refuse registration. Even if the parents gave completely accurate and adequate information, if circumstances change, the authority can refuse registration.

Suppose a child develops health problems, or is found to have special needs. Suppose a family simply shifts their style of home education, after finding that their child responds better to a different approach. Any of this would mean that the authority can refuse registration.

And once an authority has refused or revoked registration, it can continue to do so. Under 19B(6), an authority has continuing discretion to refuse to register a child simply because the local authority has refused or revoked registration of that child in the past.

In addition, if an authority enters an SAO because it has refused registration, it can then refuse to register the child because of the SAO. Under 19B(3) local authorities may – *i.e.*, they have discretion not to -- enter a child's details on a register if that child is within subsection (6). A child is within subsection (6) if: (a) a previous application to register was denied, (b) previous registration was revoked, or (c) an SAO is in force in respect of the child.

3.5.3. Discretion to revoke EHE registration.

Schedule 1 provides several additional grounds upon which authorities can revoke a registration previously made.

The authority is granted power to revoke registration if by reason of any "failure to co-operate with the authority" in their monitoring arrangements, it appears to the authority that they "have not had an adequate opportunity to ascertain" the matters subject to monitoring. 19F(1)(e).

"Failure to co-operate" is an alarmingly broad standard. An authority may be able to revoke registration if the parent cannot meet for monitoring at the date and time specified by an authority. A parent who allows a child an adjustment period after deregistration from school, or who does not have a complete plan for the year when the authority demands it, may also lose registration.

An authority that decides that a family should have been more forthcoming or willing to meet, may revoke registration. Certainly, however, parents alarmed by the broad new powers granted to authorities may be reluctant to meet or fearful to be forthcoming.

An authority might say that a family's failure to present samples of written work product is a "failure to co-operate." Many home educating children, however, learn through experience rather than using workbooks or assessment. In this, as in other respects, Schedule 1 enables authorities to use the very features that distinguish home education, to disallow it.

Registration may further be at risk if parents do not allow home visits (see 3.9.6 below).

Also, as discussed below (see 3.9.5), the authority can revoke registration if the parent or child objects to the authority meeting with the child without the parent or educator present, if the authority concludes that this has given them inadequate opportunity to ascertain the child's wishes and feelings – even though Schedule 1 expressly gives both parent and child the right to object. 19F(1)(e).

Registration can be revoked if the child "is not a home-educated child" 19F(1)(c). Schedule 1 does not specify whether parent or authority makes this determination.

Registration can be revoked if "the child is no longer in their area" 19F(1)(g). If a family moves from one authority into another, therefore, they will thereafter be subject to an authority's discretion to refuse registration, because this discretion follows any revocation of registration. 19B(6)(b).

There is, finally, a provision that relates to suitability of education. An authority may revoke a child's EHE registration if it appears to the authority that the child is not receiving suitable education. 19F(1)(f). **Schedule 1 requires no opportunity for parents to provide supplemental information with respect to the child's education. It requires no effort by the authority to work with the family, and no opportunity for a parent to remedy or disprove any deficiencies perceived by the authority.**

This demonstrates that Schedule 1's home education scheme fundamentally is not about authorities working with parents, or efforts to encourage quality education. It is punitive and prohibitive, designed to enable authorities to prevent families from exercising their duty to educate their children by choosing to home educate.

3.5.4. Prohibition against re-applying for registration.

Schedule 1 permits an authority to specify a period, to be directed by regulations, during which parents may not submit an application for registration if a local authority has denied their application or revoked registration, unless "the authority are satisfied that there has been a change of circumstances that justifies an application being made within that period." (19C(5) and (6)).

This seems to preclude not only re-application in the same local authority, but also application in a different local authority. Presumably during the specified time period, the local authority can issue an SAO because the child will be unregistered. No indication is given as to whether this period will be days, weeks, months or even years.

3.6. Information Sharing

19H provides for regulations to require local authorities, and schools from which a child deregisters in order to be home educated, to share information about a child who has applied for EHE registration, or whose registration has been refused or revoked, or in respect of whom an SAO has been served.

The DCSF Impact Assessment (at page 87) specifically refers to a new duty for a school "to conduct an assessment of the child, which it will then supply to the LA." This assessment is presumably to take place when the parent deregisters a child from a school. One can only assume that it will serve as a benchmark for the child's short-term performance; thus incredibly tying many families into an assessment, done by the very institution which may have failed their child and caused them to choose to home educate.

3.7. Regulations Concerning the Application for Registration.

Section 19C gives the Secretary of State power to make supplementary provision in connection with application for EHE registration. Regulations may make provision about steps to be taken by a local authority in connection with an application to register (19C(1)), and "matters that are or are not to be taken into account" in an authority's decision whether to deny registration when it has discretion or an obligation to do so (19C(2)). Given the indications of Schedule 1, the provision of additional power to the Secretary of State further to create/stipulate further regulations with respect to home education is alarming.

The explanatory notes indicate that the regulations will yet further constrict those trying to exercise their educational duty via home education:

[T]he Government envisages that all applications will be required to provide [a statement giving information about the child's prospective education], or to provide an undertaking to provide such a statement. (Explanatory note 118 for 19C(4).)

This, coupled with the Impact Assessment's note that, "Exemplar curricula which parents could use successfully are freely available from the DCSF and QCA websites" (p.87) suggests that the National Curriculum may ultimately be imposed upon EHE children, without further debate or consultation, thereby eroding one of the primary reasons for, and freedoms of, elective home education.

Under Schedule 1, parents will be required to set out a plan in the application to register (19C(4)), and an EHE child can be removed from the home education register if the parents do not follow the plan they submitted with their application, regardless whether there was good reason to vary the programme, or whether the education actually provided was as good as or better than it would have been under the plan. Authorities will have power to revoke registration if the parent "fails to fulfil an undertaking" in that plan (19F(1)(a)) or if information that was included in the application, even if true when made, has become inaccurate (19F(1)(b)).

One of the benefits of EHE is that it is flexible and adaptive; having to adhere to a detailed plan made months earlier is counterproductive to that process of responsive facilitation of learning. It may well restrict education provision: a child who desires to learn a new subject not listed in the start of year plan may be unable to commence those studies for fear of contravening the plan, or deviating from it.

Families new to home education may require time for both parent and child to settle into the new way of learning; they simply may not know how they will conduct future days. A child with special needs, or a child traumatized by experience at school, such as bullying, may require a period without set plans, to recover from the trauma and for the family to find a new rhythm.

Any EHE family may, and typically does, change their approach over time. Families who start with a structured approach to home education typically become less structured over time as they find that their child learns as well, or better, without the formal structure used in school.

Nonetheless under Schedule 1 EHE families may be prohibited from home educating, precisely because they display personalisation and adaptability in their educational provision -- qualities that are widely considered positive for all forms of education.

3.8. Lapse of Registration.

Parents must make an application to register every year. 19D. As written, the parent has the obligation to re-apply. If they fail to do so within 12 calendar months of an authority's notice of registration, the registration automatically lapses (19D(4)(a)) and the child becomes a Child Missing Education, regardless of their actual educational provision. The authority could then, under the Bill, serve an SAO.

As discussed, the authority has power to refuse an application for registration. Because the child is considered "registered" from the date the authority receives an application (19D(3)), this poorly drafted section creates a period during which the child is registered, between the date the authority receives the application and the date the authority gives notice of a decision not to enter an EHE child's details on the home education register. 19D(2) and 19D(4)(b). It is unclear, then, whether registration would be refused or revoked.

3.9. Monitoring Home Education, Visits and Meetings.

The Bill gives the authority duties to monitor the home education provided to a child.

3.9.1. Suitability of education.

Only **one** of the monitoring requirements relates to ascertaining whether the education is suitable (19E(1)). The Bill's definition of "suitable" matches the Section 7 standard (suitable to age, ability and aptitude and any special educational needs the child may have) (19E(2)). DCSF, however, plans a Review with respect to the definition of suitable education in January 2010.

Given the recent Badman Review into elective home education which employed inadequate data and erroneous statistical analysis to underpin apparent bias and pre-determined outcomes, and the disregard of both the Select Committee inquiry and the DCSF consultation before presenting Schedule 1, the prospect of an imminent review to inform legally binding requirements on home education provision raises significant concerns.

3.9.2. Accord with information.

The authority must also monitor "whether [the education] accords with information provided to [the authority] for the purposes of the application for registration" (19E(1)(b)). This implies a fundamental mistrust of parents, insinuating that they may deliberately mislead local authorities about their intent, or that children must be used to investigate whether the parents are in fact following the plan they were required to submit.

3.9.3. Child's wishes and feelings.

The authority must ascertain "what the child's wishes and feelings about [the home education] are." 19E(1)(c). What if the child's wishes are not to meet with the local authority? What if the child's wishes are not to be put on the spot, and required to perform upon command during an authority's visit? What if the child has special needs which could make the very prospect of an official inquisition damaging and destabilizing?

In contrast, what if the child expresses a wish to go to school, but the underlying reasons for this are not conducive to that child's welfare (see below)? What if the child desires access to other children for the purpose of bullying or to gang culture/ weapons? What if the child wants to avoid education, which might be easier via a deliberate lack of participation whilst at school, or truancy, rather than under the care of a parent?

Will the authority do the converse, and question school children whether they are in school because of choice or because of their parents' influence? If a school child said he would rather be home educated, would an authority require the parents to take him out of school?

3.9.4. Welfare.

Finally, the authority must monitor "whether it would be harmful for the child's welfare for the child to continue to be a home-educated child" (19E(1)(d)). As discussed above (3.5.1), this lax "welfare" standard could open the way for authorities to act on their own biases to prohibit families from home educating, and could in fact exacerbate welfare concerns. Even if an authority had safeguarding concerns, those could be addressed using existing child welfare laws and procedures (Children Act 1989).

3.9.5. Mandatory meetings, meetings alone with the child.

Authorities must hold at least one meeting with the child (19E(3)(a)), and at least one meeting with a parent of the child (19E(3)(b)) each year. If the authority considers that someone other than the parent has primary responsibility for the education, the authority must also meet with that person at least once. (19D(1)(c)).

Schedule 1 provides that the authority may arrange for "a meeting with the child at which no parent of the child or other person providing education to the child is present." 19E(4). The Badman Report also suggested that authorities be entitled to meet with and question home educated children without a parent present. This suggestion met with strong objection and with broad support that this would infringe civil liberties or violate Article 8. Whilst Schedule 1 appears to provide a protection, because 19E(4) indicates that the authority may not arrange such a meeting if "the child or a parent of the child objects," a later provision (19F(1)(e)) erodes this by expressly providing that if a parent or child makes such an objection, the authority can revoke the child's registration.

19F(1)(e) provides that if, "by reason of" an objection to a meeting without the parent or other educator present, it "appears to" the authority that they "have not had an adequate opportunity to ascertain" the matters subject to monitoring, the authority can revoke the EHE registration. The matters subject to monitoring include "what the child's wishes and feelings" about the home education are. (19E(1)(c).) **The authority need only contend a belief that the child might speak differently without the parent present, in order to claim that this standard is met.**

It is curious that the explanatory notes completely gloss over this provision (indeed, all of the revocation provisions). Note 124 states only that: “New section 19F gives a local authority the power to revoke registration on their home education register in certain circumstances.” While Note 122 states that “the local authority cannot make arrangements to see the child on their own if the child or the parent objects to such a meeting,” the Notes do not mention that the authority can revoke registration if the parent or child makes such an objection.

In practice, therefore, authorities can pressure families to permit them to meet alone with the child under threat of refusing to allow the parent to home educate. Parents or children who exercise their right to object to such a meeting may face an SAO for doing so.

3.9.6. Home visits.

Finally, the authority must make at least one visit to “the place (or at least one of the places)” where education is provided (19E(3)(d)). The authority must provide at least two weeks’ notice of any meetings or visits. (19E(5).)

As mentioned above, the suggestion in the Badman Report that authorities visit the home of every home educated child was met with strong objection. The right to enter a family home solely because a child is home educated, with no reasonable suspicion of harm or wrongdoing, was seen to impose a new and unjustifiable level of governmental intrusion into family life. Yet Schedule 1 incorporates the premise of a home visit in demanding that the authority visit the place where education is provided. The parenthetical saying that the authority must visit “at least one of the places” of education does not provide assurance that the authority cannot insist upon visiting the home.

By its nature, home education takes place in many places besides the home. But who will specify at which “place” the mandatory meetings are held? Can the authority demand that a meeting take place at the home? If the parent suggests a meeting outside the home, can the authority also demand a meeting *in* the home? If the parent refuses to provide access to the home, will the authority then revoke registration, asserting that this comprises a “failure to co-operate with the authority in arrangements made by them” with respect to visits? (See 19F(e).)

3.10. Appeal.

Finally, the Bill states that regulations shall confer a right of appeal 19G(1) of an authority’s decision to refuse an application to register (under 19B(5)(b) or (c)), or to revoke registration (under 19F(3)). Regulations may provide for the time period for appeal, the person or body to whom appeal lies, the powers of that person or body, the matters to which regard may be had in considering an appeal, and the procedure on appeals. 19G(2).

This administrative appeal, however, cannot substitute for the failure to allow a judicial review with respect to suitability of education, the standard under Section 7 for exercise of the right to home educate.

The CSF Bill versus HRA and
UNCRC

Imran Shah

THE CSF BILL versus HRA and UNCRC

The Children, Schools and Families Bill contravenes the 1988 Human Rights Act, and is inconsistent with provisions contained therein, and with the United Nations Convention of the Rights of the Child. The 1988 Human Rights Act makes it unlawful “for a public authority to act in a way which is incompatible with a Convention right.” The CSF Bill as currently drafted violates the HRA.

The Human Rights Act instructs local Authorities that they must respect parents’ rights to educate according to their own religious and philosophical beliefs.

(The Children, Schools and Families Bill gives wide-ranging powers to local authorities to prevent parents from educating their children at home, without taking into consideration parents’ religious and philosophical beliefs, or the best interests of the child.)

Article 3 of the UNCRC instructs Local Authorities to have the best interests of the child as the primary consideration.

(There is no requirement in the Bill for the local authority to consider what is best for the child.)

Article 5 empowers parents to act to protect their children rights to freedom of association. Implicit in this right, is the freedom not to associate.

(If parents object to their children being seen alone, the local authority can issue a School Attendance Order.)

Article 5 states that parents can expect: “state parties to respect their responsibility to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise of a child's rights”

(The CSF Bill does not honour this provision and instead gives local authorities punitive powers to issue School Attendance Orders for procedural violations.)

Article 12 gives children the right to refuse to be seen alone.

(If parents object in order to preserve their child's right, the local authority can issue a School Attendance Order.)

Article 15 of the UNCRC gives children the ‘freedom of association’. Implicit in this, is the freedom not to associate.

(The Bill violates this by giving local authorities arbitrary powers to see children alone. The children have committed no crime and the local authority does not need to demonstrate that it has concerns, nor is there any judicial oversight of this process.)

Article 16 of the UNCRC states that: "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.... The child has the right to the protection of the law against such interference or attacks."

(The CSF Bill gives local authority powers to see children alone and demand to see their material since any objection can result in the issuance of a School Attendance Order.)

Article 18 requires government and its agencies to recognize that it is parents that have the primary responsibility for the upbringing and development of the child since the best interests of the child will be their basic concern. Agencies are mandated to provide appropriate services.

(There is no requirement in the Bill for the local authority to consider, or address, or affirm, the needs and wishes of parents, or to provide services that support home educating families.)

The CSF Bill and SEN

- a. Letter to Ed Balls re SEN Impact
- b. Every child matters but not if you
are Autistic.....

Carole Rutherford, Autism in Mind

4th January 2010

Dear Mr. Balls,

As you are aware the current Children Schools and Families Bill has its second reading in the House of Commons on January 11th. Autism-in-Mind (AIM) can find no evidence that an assessment was carried out regarding the impact that this Bill could potentially have, either within the Impact Assessment or the Equalities Impact Assessment, for children who have a Disability or a Special Educational Need and who are potentially going to be visited by their LAs in their homes. Nor does it appear that advisory groups or parents of children being home educated were consulted in relation to the Impact Assessments.

1. Impact on children

AIM has grave concerns about untrained Local Authority officers going into the homes of parents who are home educating their autistic children and the potential impact that these visits could have on the emotional well-being of autistic children. Our concerns were voiced during an informal meeting with Iain Campbell, who is a member of the DCSF Elective Home Education Team, and also when AIM gave evidence to the Children Schools and Families Select Committee on Wednesday October 14th last year. Our concerns were noted in the Report which was published on December 15th 2009.

Taken from the Children Schools and Families Select Committee Report

Monitoring where the child has special educational needs Where the home educated child has special educational needs (SEN), further issues are raised in relation to the monitoring recommendation. The National Autistic Society notes that the population of home educated children is likely to include a relatively high proportion of children with autism. This, it suggests, is due to the difficulties that many children with autism face at school, whether with regard to a lack of understanding within schools of the condition, difficulty accessing the necessary support, the pressures of social interaction in a school setting, or bullying.

Carole Rutherford, co-founder of AIM, a national campaign and support group for parents and carers living with autism, elaborated on the added considerations for these families in relation to home visits and interviews:

‘Children with autism find change very difficult and often hold fixed and rigid views about people and the places where they are used to coming into contact with that person. If a child is used to seeing a professional/ teacher therapist in school then bringing that person into their home places that person out of context in their minds, and they can find it very difficult to interact with that person even though they are well used to doing so in school.’

2. Consultation of advisory groups

Neither AIM nor the National Autistic Society was consulted about the Impact Assessments which would have enabled us to officially register any concerns that we had regarding home visits. It is AIM's understanding that as stakeholders we should have been consulted.

The only evidence that has been cited is written evidence from a feasibility study carried out by the York Consulting Group for the DCSF in December 2006 and the Review of Elective Home Education in England July 2009.

3. Consultation of parents and children

We can see no evidence of involvement of parents of home educated children within the Impact Assessments. The conclusion of the Equalities Impact Assessment was that:

'An adverse impact is unlikely, and on the contrary the policy has the clear potential to have a positive impact by reducing and removing barriers and inequalities that currently exist.'

The Graham Badman Review and its subsequent recommendations have in some instances already created barriers and raised tensions between some parents and their Local Authorities. Not all parents who are home educating their autistic children enjoy a good relationship with their LAs.

The majority of parents who contact AIM have removed their children from the state school system after long and protracted battles with their LAs, usually having failed to secure support or the correct educational provision for their children.

These parents now have to come to terms with having the people who failed their children coming into their homes to monitor their educational provision and to carry out safe and well checks.

Some of the children that were removed from the system were self harming and suicidal. It is understandable that the parents of these children are now concerned about the prospect of having LA officials coming into their homes on a regular basis.

Had families who are living with autism who are home educating their children been offered the opportunity of a 'key worker' as outlined in the Autism Exemplar, these families would already be in regular contact with a trusted person who has regular contact with the family.

AIM believe that the Government has a responsibility to those families who are home educating their disabled and/or special educational needs children, to assess for any potential impact that home visits could have on the emotional well-being of the children or the family as a whole.

Training is another huge concern for us. We do not feel that training and the costs which will be incurred for the necessary and accredited training was adequately budgeted for within the Impact Assessment.

We note that the Impact Assessment states that **'it is reasonable to assume that a child with SEN will often warrant more in-year monitoring'**. We can see no costing within the Impact Assessment for the training package that the Equalities Impact Assessment says will be developed for local authority officers with particular reference to SEN and Gypsy, Roma and Traveller children. Local authority officers will require a great deal more training than 'particular reference' to SEN if they are to be adequately trained to enter into the homes of families living with autism. Autism is a very complex condition and no two children with autism will present in the same way.

AIM would like to know why the Equalities Impact Assessment did not address the issue of home visits and the impact that they might have on children who are disabled or have SEN? We would also like to know why stakeholders were not consulted during the Impact Assessment process.

As we are fully aware that the current Bill is progressing through the system with some considerable speed we look forward to an early reply from you in response to this letter.

Yours Sincerely

Carole Rutherford
Co-Founder
Autism-in-Mind
0191-5490898

Every Child Matters but not it appears if you are autistic and are being educated at home.

The Government appears not to care what the cost of the new Children Schools and Families Bill might be to autistic children who are being educated at home because the state school system has failed them.

Every Child Matters says that it is *'a shared programme of change to improve outcomes for all children and young people. It takes forward the Government's vision of radical reform for children, young people and families'*. It remains at the very heart of everything that this Government does with children in mind. It underpins all child related policies and is also the back bone of the new Bill. So why then has there been no impact assessment carried out to see if having proposed mandatory visits in their homes could affect the emotional well-being of some of the children who this government considers to be vulnerable? Autism-in-Mind (AIM) has written to Ed Balls asking him for an answer to this question. Even radical reform must surely assess for the impact that any of the Government's policies will have on a child.

Autism-in-Mind (AIM) is a campaign and support group **that** supports families living with autism, including those who are now educating their autistic children at home because the state school system has failed their children.

AIM has been contacted by parents from all over England whose children were self-harming and suicidal before they were taken out of school, concerned about the changes to home education in the new Bill.

Some of these children remain very fragile even years after leaving the school system and are still terrified that one day they might have to go back to school. Parents are now facing the possibility that the people who failed their children will be coming into their homes to make sure not only that they are receiving a suitable education but also to carry out safe and well checks.

Parents who have children with autism and other disabilities are rarely unknown to their local authorities. It is very difficult to have a disabled child and remain under the radar. The vast majority of parents would not want to do that in any case. These parents are not hiding. They simply want what is best for their children and that includes an education that not only teaches them academically but also equips them for life. Outcomes are very important to parents who are home educating their autistic children and those outcomes include a great deal more than 5 grade C to A GCSEs.

Government commissions review of Elective Home Education

In January 2009 the Government commissioned Graham Badman to assess if the current system of supporting and monitoring home education was the right one. The Elective Home Education Review got off to a controversial start after Baroness Delyth Morgan claimed that parents who were educating their children at home could be using it as a cover for abuse, neglect and forced marriage.

The Baroness went on to say that home schooling could be masking a range of evils including sexual exploitation and domestic servitude. http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2009_0013

On June 11th last Year the Badman Report and Recommendations for Home Education was published:

AIM spoke with Graham Badman while he was carrying out the review and clearly outlined why home visits by LA officials, many of whom have received no autism specific or SEN training, could be extremely distressing for autistic children. These children often have very fixed and rigid thought patterns and expectations including who is welcome into their homes and who they are comfortable with coming into their homes. Recommendation 7 stated 'That designated local authority officers should:- have the right of access to the home;'

<http://publications.everychildmatters.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=HC+610&>

The Graham Badman Report was not well received by home educators and attracted a great deal of attention after the report was published

On July 22nd 2009 the Children Schools and Families Select Committee announced that they would undertake a short inquiry into the Graham Badman review of elective home education The Committee invited written submissions on:

- the conduct of the review and related consultations (e.g. the constitution of the review team; the scope of the terms of reference for the review; and the nature of the consultation documents).
 - the recommendations made by the review on elective home education.
- http://www.parliament.uk/parliamentary_committees/csf/csfpn220709.cfm

Having submitted written evidence AIM was asked to give oral evidence to the committee on October 12th last year.

The subsequent report published by the committee on the 15th December 2009:

<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmchilsch/39/39i.pdf>

'We are disappointed at the less than robust evidence base that the Badman Report and the Department have presented with regard to the relative safeguarding risk to school and home educated children. Furthermore, we suggest that existing safeguarding legislation is the appropriate mechanism for the purpose of safeguarding and promoting the welfare of home educated children, and that the proposed addition of annual visits would offer little direct safeguarding benefit over and above this. In our recommendations we

have strongly discouraged the notion that local authority home education teams should be given a more overt safeguarding role.'

The Government has eight weeks to respond to the Select Committee Report from the date of publication and has so far not done so but is in the meantime pushing ahead with their new Bill which will have its second reading in the House of Commons on January 11th.

Following the Badman Review Recommendations an Elective Home Education Consultation was launched by the DCSF looking at the recommendations and also outlining the DCSF proposals to act on the recommendations. The consultation ended in October and as [of] yet there has been no publication of the outcome of that consultation. There are home educators who are wondering why a consultation was held when the Bill was published before the outcome of the consultation. In short it is like putting the cart before the horse and parents could be forgiven for thinking that the consultation was merely a paper exercise that had to be adhered to. There are parents who believe the same of the Impact Assessment process.

The Select Committee believes that annual home visits would offer little direct safeguarding benefit to children. The DCSF has stated that it expects the homes of children who have an SEN to be visited more frequently than on an annual basis. The Select Committee has emphasized the importance of the need for thorough training:

Given the concerns of some home educators that, on occasion, local authority officers are unsympathetic to more unstructured educational approaches, we welcome the Badman recommendation that officers receive training in this regard. However, we emphasise the need for thorough training that will equip officers with an understanding of a range of learning theories, child development and educational philosophy. We point to the difficulties of, for example, assessing without such knowledge the progress of a child who has moderate or even mild learning difficulties.

AIM can find no evidence in the Impact Assessment that the specific training, that would be essential before LA officials enter the homes of autistic children, has been budgeted for.

Time is rapidly running out for parents who are home educating their autistic children to raise their concerns about home visits and make their voice heard. The Government does not know 'every child' personally and every child is different and unique this is especially true of those who have an autistic spectrum disorder.

Carole Rutherford

Co-founder Autism-in-Mind

5

Badman impact assessment - a
catalogue of errors

Michael Crawshaw

Badman impact assessment - a catalogue of errors.

Michael Crawshaw, November 2009

The impact assessment report on the financial implications of implementing the Badman proposals is a catalogue of errors. Not only do they take the discredited statistics from Badman's submission to the DCSF select committee, but they compound the error by interpreting these incorrectly and using those figures in flawed analysis. The result, unsurprisingly, is total nonsense.

The 'benefits' are at best wildly overstated and in all probability a pure fantasy. Meanwhile the costs are significant and still understated by the DCSF.

Fantasy Benefits.

The DCSF estimate that improving the educational attainment levels of those home educated children who it believes are currently poorly educated would produce a present value benefit of £410-820m. This figure being the present value of the lifetime improvement in salary levels resulting from better qualifications obtained. The figures are a fantasy.

1. **They have double counted the benefits.** They have assumed that monitoring improves qualifications for the 20% of home educated children they believe are currently receiving an inadequate education. They then calculate the lifetime benefits for that 20% -so for 4,000 children in the registered population of 20,000. But they then they also include the benefits for another 363 children (which is 4000 divided by eleven school years) each year for the next nine years. No adequate explanation is given but I think the underlying (flawed) logic is that in the first year of introducing the Badman proposals the existing problem 20% get sorted out overnight. But because the DCSF is doing a cost analysis over ten years someone decided they should also factor in the benefits deriving from all their monitoring over the subsequent nine years. This is like having your cake and eating it! To illustrate the point imagine that the LAs judged all the 20000 home educated children to be inadequately educated. Under the methodology used here they would take the lifetime benefits from improving outcomes for this 20000 and add to it the benefits of another 1818 children being improved each year for the next nine years. So out of a population sample of 20,000, they would have 'improved outcomes' for around 40,000! Put simply: they have double-counted.
2. **They have in any case overstated the percentage of home educated children apparently receiving a poor education** because they have interpreted their own figures incorrectly. They say that LAs have told them that 8% of home educated children receive *no education*. In fact Badman's Oct 9th submission to the select committee put the figure at 1.8%. They say that LAs have told them that 20% of home educated children receive an *inadequate* education. In fact the submission suggested the figure was 7.1%. I think I understand how they have made this mistake. The 20% figure is probably a number used by LAs to describe the percent *NOT KNOWN to be receiving a suitable education*. It includes 5.8% who are not cooperating with assessments and 9% who have not yet been assessed. Someone has then misinterpreted this as a figure for children *KNOWN to be NOT receiving a*

suitable education. Clearly this is not the same thing as *NOT KNOWN*. Similarly I suspect the 8% figure used for those who are receiving *no education* is a misinterpretation of the figure *NOT KNOWN to be receiving an education i.e.* an addition of the 1.8% classed as not receiving an education and the 5.8% not co-operating with monitoring and so not known. Again, *NOT KNOWN to be receiving an education* is not the same thing as *KNOWN to be NOT receiving an education*. So they have used the wrong figures.

3. **Moreover we continue to challenge the validity of Badman's findings** that 1.8% of home educated children do not receive any education and 5.3% do not receive a full time or suitable education. The 1.8% represents 210 children. We don't know who they are, or what their problems might be (Lord Lucas mentioned in the Lords that some of these will be school refuseniks that the LAs have misclassified as Home Educators, others may be children who can not cope with any education because they are recovering from illness etc). Whatever the reasons these 210 children who are not receiving an education are, by definition, not 'home- educated children' and are a different matter. Overhauling the home education system won't fix that problem. Will these 210 children pick up their books or rush back to school as soon as the parent presents a one year educational plan? One suspects the problems lie deeper than that. Then there is the 5.3% figure for those who apparently do not receive a suitable or full time education. We know that some children who come out of school lie fallow for a time. Others do a shorter but perhaps more effective working day than that of children in school. By Badman's own admission many LA officers do not understand the different nature of home education and so will be inaccurately assessing the provision as 'not full time or suitable' simply because it is not like school. That is why Badman said they need to be trained to understand home education. Until they are trained their opinions are irrelevant and the 5.3% figure is inadmissible.

To sum up on the gains:

- We reject the claims that the financial gains arising from implementation of the Badman proposals are £410-820m.
- We would also reject an amended figure of £240m- 480m which would be arrived at by correcting for the double counting error.
- We do not even accept a figure of £75-150m which would be arrived at by using the correct percentages for LA opinions on the prevalence of unsuitable provision among the home education population. These percentages are based on the opinions of LA officers who are not impartial, not trained to understand home education and are not sufficiently engaged to be able to make an assessment. Their opinions are therefore not admissible.
- Objective independent research (http://www.fraserinstitute.org/commerce.web/product_files/Homeschooling2.pdf) has shown that the educational outcomes of home educated children are as good as, if not better than those of school children. Not worse. So there is nothing to be fixed. No better outcomes to be attained. No gains to be measured.

There are however substantial costs. And they remain understated.

1. It would appear that the DCSF are assuming an average of around £17 per hour for the costs of an LA officer and the opportunity costs for the time the

parent spends dealing with the LA officer. (This is calculated as follows: Examine the figures for the new cohort of 20,000 to derive clean costs absent of the hidden costs of existing LA officers. So this new 20,000 takes up 240,000 LA hours in monitoring and so the same time again for the parent. Total of 480,000 working hours *wasted*. Take the £16.6m increase in ongoing annual costs shown in the report when moving from 20000 to 40000 children. That's the cost for monitoring the new cohort. Back out £6.6m registration costs and an estimate for training costs of £2m gives an annual cost of monitoring this new cohort of £8m. So £16.7 per working hour). That figure does not include anything for travel, IT support, secretarial support, premises, pension entitlement etc. It might be that a part time ex-teacher working from home would accept £17 per hour for these duties but a fully employed LA officer with all the infrastructure support would cost significantly more than £17 per hour. Similarly the opportunity cost to the parent or child is higher than £17 per hour. If you consider that it needs to pay for a supply teacher to be hired to take classes that day and to reimburse travel expenses and materials then £17 an hour would not cover it. Most likely the vast majority of the 240,000 hours will simply be downtime; time taken away from the child's education. What cost do you place on the damage caused by forcibly taking a parent and teacher away from a child for the best part of a day, perhaps twice a year?

2. The DCSF figures still do not include anything for genuine support (exam fees, tuition, labs, sporting facilities etc).
3. The DCSF figures make no allowance for the additional costs of having more children in state education as a result of these proposals.
4. The figures do not include the cost of SAOs because it was assumed the ratio would be only 0.05% which is the national average. A far higher ratio will be needed to force home educated children into school in the face of such hostility to these proposals. Other legal costs should be expected. These have not been factored in.

To sum up on the costs.

- The DCSF are underestimating the costs of recruiting more LA officers and the opportunity costs for parents and child.
- They have not included any costs for supporting home education
- They make no allowance for the greater costs the state will incur as a result of more Home Educated children being forced into school.
- No allowance has been made for legal costs

A critique of the data presented to
the Commons Select Committee
Enquiry into the 2009 Review of
Elective Home Education in
England

Tania Berlow & Jacquie Cox

A critique of the data presented to the Enquiry into the 2009 Review of Elective Home Education in England

Tania Berlow and Jacquie Cox 05/01/2010

1. There are an estimated 20,000 Electively Home Educated (EHE) children registered with Local Authorities in England¹. There may be another 40-60,000 EHE children not registered with Local Authorities. There is currently no obligation for families to register in this way. Under current law and guidelines parents have a duty to ensure their children receive a suitable education, not Government.
2. If a Local Authority has reason to believe that a suitable education is ***not*** taking place, they then have a duty to intervene. The recent Review into EHE did not concern itself with asking why many Home Educators choose not to register as electively home educating. Any data discussed in this document is referring to those EHE children known to the Local Authorities, through registration or otherwise.
3. The Badman Review on Elective Home Education (EHE)² was commissioned by the Department for Children Schools and Families (DCSF) used 3 questionnaires.
4. The first questionnaire was not used to extract data but was used to inform the type of questioning that came in the second questionnaire. 90 Local Authorities (LA's) responded.
5. The second questionnaire was answered by only 25/152 LA's and only 20 of these 25 LA's gave figures that could be used. It appears that the data from this questionnaire has been disregarded for the statistics used in the Impact Assessment used to inform the Children Schools and Families Bill.
6. When home educators questioned the provenance and the robustness of the data used by the review author to draw conclusions and make recommendations to the Secretary of State, the author asked the Star Chamber for more time to conduct a further supplemental data gathering exercise, which was completed by Local Authorities *after* the Review was published³.
7. It is this supplemental questionnaire, to which 74 LA's responded, that has been used to inform the Impact Assessment ^{4&5} and in turn the actual Children, Family and Schools Bill⁶.
8. Home Educators submitted Freedom of Information requests and obtained the raw data from 62 of the 74 LA's that the DCSF say provided supplemental data, and also a further 14 LA's who say they participated but were not on the DCSF list. His raw data shows the exact answers of the LA's to the Supplemental Questionnaire⁷.

It is the supplemental questionnaire that is being critiqued in the following pages:

CHILD PROTECTION PLANS

9. Supplemental data about the number of Child Protection Plans (CPP's) (CPR3 Part B Child protection register) on 31st March 2009 revealed 51 care plans in 11,700 EHE 5 to 17 year old children (0.4%).
10. In the Review authors' letter to Barry Sheerman, Chair of the Select Committee⁸, this figure was compared to a national figure taken from the Statistical First Release 2009 of 5-17 year olds.
11. The Statistical First Release for 31st March 2009 shows that the national figure for all children age 0 - 18ⁱ is 0.31% which is 34,100 CPP's in 11 million children.
12. Nationally for children aged 5-17 there were 18,590 CPP's amongst 7 201200 children which is 0.26%.⁹-table 3B.
13. Only 20 of the 74 responding Local Authorities had any EHE children with child protection plans.

1 LA had 8 CPP's	2 LA's had 3 CPP's
1 LA had 6 CPP's	8 LA's had 2 CPP's
1 LA had 5 CPP's	6 LA's had 1 CPP's
1 LA had 4 CPP's	
14. The 0.4% statistics of EHE children with CPP's do not take into account that one large family could account for all the CPP's in some of the figures mentioned. When dealing with small sample sizes the figures become skewed - for example, a small LA such as Sunderland (38 children) with one CPP is 3.7% of its known EHE population with a CPP whereas Essex with 733 children and one CPP is only 0.14% of its EHE population with a CPP. Sunderland appears to have almost 20 times the national average whereas Essex has approximately half the national average.
15. The comparison national figure given of 0.2% does not include children taken into care. The LA's had an opportunity to mention EHE children taken into care and so far only 3 cases were mentioned. Nationally there were 17600 children aged 5 - 17 who were taken into care for the first time in 2009.¹⁰
16. According to the Laming report, for the entire year 2008, across 11 million children nationally, there were 29,000 CPP's in place (0.26%) and a further 37,000 Care Orders (0.34%)^{11&12}.
17. On 27 March 2009, home educators submitted Freedom of Information requests to all 152 LA's to obtain data on *substantiated abuse or neglect* cases within the EHE community. Analysis of the returns shows that the total rate for 129 Local Authorities who provided data was 0.31%¹³.

ⁱ Ages 0 to 18 includes children aged 17 - i.e. up to 18th birthday

SUITABLE EDUCATION

18. In his letter to Barry Sheerman of the Select Committee dated October 2009, the Review author states that 1.8% of registered EHE children were considered as not receiving any education - a figure that comes from the supplemental questionnaire data submitted by 74 LA's.¹⁴
19. In this letter the Review author quotes a further 5.3% not receiving a suitable or a full time education. The raw data returns show that the rate for education considered 'not suitable' was just under 2% whereas 'not full time' was 3.35%¹⁵
20. The guidelines on Elective Home Education specifically state that 'full time' school hours do not apply to EHE¹⁶. However, the initial questionnaire sent to Local Authorities stated 'full time' to be 20 hours per week¹⁷. Therefore, included in the 3.35% '*not full time*' data are answers from Local Authorities who are redefining guidelines and law. Many home educators cannot and do not segment their child's learning experiences into timetabled units. However many home educators consider their children to be learning 24/7.
21. The above 3 categories, '*no education*', '*not full time*', and '*not suitable*' when added together make a 7.1% figure where the LA's state some concern about educational provision.
22. The review author goes on in the letter to the Select Committee to detail a further 5.8% '*not co-operating*' with monitoring and 9.3% '*not yet assessed*'.
23. The Impact Assessment (page 85) states that **8%** are receiving no education and has added figures from all four categories above (italics), and has rounded them down stating that there is a total of '**20%** not receiving a suitable education.' These figures are inaccurate and yet have been used to inform the rationale behind the CSF Bill.
24. The parents '*not co-operating*' are not necessarily families who have refused to have any contact with the LA, (it is considered unwise to do so) but include those who submit written plans and philosophies. Many LA's, **in keeping with current law and guidelines**, would not consider such families to be non co-operative. However, many LA's do consider families who do not wish a home visit to be non co-operative.
25. The 9.3% who were '*not yet assessed*' are also included in the DCSF Impact Assessment as '*not receiving a suitable education*'. The supplemental data was requested at the beginning of a new academic year, and most LA's had numerous children they had not yet processed. It is not good practice or statistically robust to include the un-assessed children in the data for those apparently '*not receiving a suitable education*'.
26. Weeks previous to the supplemental questionnaire being sent out to LA's, home educators themselves submitted 152 Freedom of Information requests asking LA's to detail the educational concern rates they had and the reasons why there were concerns. In total a 6.06% rate for 142 of the responding LA's was gathered and this included some LA's who 'redefine' guidelines¹⁸.
27. From Home Educators own Freedom of Information requests and the supplemental questionnaire it is evident that LA's are not using the powers they already have when they have educational concerns i.e. by issuing School Attendance Orders. Only approximately one in ten 'concerns' have SAO's issued.

MISSING CHILDREN (runaways)

28. Based on the 62 FOI request returns of the raw data that we have received to date, 53 LA's gave data returns in this category. 25 of these 53 LA's had zero missing children (runaways). 16 LA's quote numbers of missing children but also commented that these were not actual runaways, *merely families that had moved without providing a forwarding address*. 7 of the 53 LA's quoted numbers of missing children but did not qualify that number or differentiate between actual runaways and those that had moved with their families. In total LA's mention 226 children in this category. However in his letter to Barry Sheerman, the review author only mentions 125 'missing children'.
29. If a *school child* moves home to another county, the family is not under any obligation to inform their LA of their new address. Similarly, a family who home educates does not have to inform their LA of a house move.
30. Of the responding Local Authorities, *not one* indicated in the supplemental questionnaire that they had *any* previous concerns about any of these 'missing' children in the comment box alongside the data.

NEET (Not in Employment, Education or Training)

31. The review author uses the Statistical First Release data¹⁹ to compare the answers given by the Local Authorities who use the regional Connexions data (CCIS) for Electively Home Educated leavers. The SFR rate is lower than the CCIS rate.²⁰ The CCIS rate spikes during the summer period as young people leave school and await placements that start in October. The data from the supplemental questionnaire which informed the CSF bill were collected in September and therefore will be higher.
32. The figure quoted by the Review author of 5.2% is the SFR data for 16 year olds only, and does not take into account the seasonal spike. Therefore any EHE young people who were no longer of compulsory education age and who did not care to inform Connexions of their plans may have been counted as NEET.
33. Many EHE young people do go to college to take GCSE exams and would also be counted as NEET while they were awaiting placements. A proportion of EHE young people would simply continue learning at home. They too will have been counted as NEET.
34. In the supplemental returns only 36/74 Local Authorities answered this question. No regional comparisons were made for these 36 LA's to see if they were comparable to the CCIS national averages.
35. Most of the responding 74 LA's did not know about many of the Electively Home Educated leavers as it is not compulsory for EHE families to register with Connexions. Those who chose not to register with Connexions or who were simply continuing with home education were not counted into the total number of leavers. The LA's therefore only commented on those they knew about. For example, Kent had 184 EHE young people no longer of compulsory education age. They asked all families and only 73 responded (40%) - of these responders 10 were NEET (13.7%). The data entry will therefore be 10/73 and not 10/184. This in itself could account for a NEET rate that appears to be up to 4 times higher than the national rate.
36. To highlight the lack of professionalism that forms the backbone of the reasoning behind the CSF bill, one LA commented that 23% of its 4 leavers were NEET²¹. This equates to 92% of one whole leaver. Percentages are covered in year 5 by the National Curriculum (which Home Educators do not have to follow).

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- ²⁰ For a full explanation of all the different definitions for NEET see -
<http://www.dcsf.gov.uk/rsgateway/DB/STR/d000870/>
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Stories – cases where the proposed
regime could fail the child

*Collected by Imran Shah & Cintha
Archer*

TESTIMONIES FROM HOME EDUCATING PARENTS

Below are a selection of accounts that were sent to the authors through various home educating forums, detailing why the parents concerned have chosen to educate their children at home. Some give testimony to the poor educational provision provided by their child's school, while others refer to how their children's special needs were not being met at school. Some parents decided to home educate in order to safeguard their children's welfare, often because their child was being bullied, which the child's school was unable to prevent. Included below are accounts of parents who chose to home educate as a positive choice, versus as a response to schools' perceived failings.

School exposed 13 year old to sex education suitable for 16 year olds Page 2

Partially deaf 3½ year old girl of mixed heritage suffers ignorance and abuse at school. Page 2

Second time around and just as good. Page 3

Boy endures bullying and boredom as school fails to offer adequate care and education. Page 3

Home education chosen for benefits of personalised learning that only a loving parent can provide. Page 4

Some of the many reasons why parents choose home education Page 5

School Hurts, Home Heals - Why One Size Can't Fit All Page 6

Late readers saved from academic failure by home education. Page 7

Boy with Down's Syndrome failed by Local Authority is happier, healthier and a real achiever now he is home educated. Page 8

School fails to protect 13 year old from relentless and harrowing bullying campaign. Home education saves him from stepping in front of the school bus. Page 9

School exposed 13 year old to sex education suitable for 16 year olds

In May 2007 my then 13yr old daughter had a Personal, Health and Social Education (PHSE) lesson, which had used a few photocopied sheets of material aimed at 16yr olds. This material included extracts from an AIDS awareness leaflet, gave information on how to give yourself an orgasm, detailed the various sexual positions one might enjoy and informed the reader that some boys and girls find anal intercourse pleasure-able.

My daughter found this material disturbing, as did I. I withdrew her from school and demanded an investigation. My complaint made the local and national press and eventually I got an apology from the Head of the Governors and the Head teacher. It was at this point that I was told that my daughter should have been on the talented and gifted register and given more challenging work. No wonder she had been bored at school.

She had also been physically and verbally bullied on a daily basis and been told by her peers that if she returned to school, her life would be made a living hell.

I have home educated her ever since. Now 2 ½ years later, she is a happy confident young lady, passing her NVQ's and continuing her studies at home. She wants to run her own business and plans to be a millionaire by age 19.

Partially deaf 3½ year old girl of mixed heritage suffers ignorance and abuse at school.

At the age of 3 ½ my daughter was shouted at by her teacher on her first day at nursery. I informed the staff that she was partially deaf, but that did not stop them from hollering at her across the playground when she had her back to them. Within a few weeks, my confident, happy daughter became clingy and did not want me to leave her. One day she came home to tell me that other children had laughed, teased and pushed her around, saying that she wore pajama trousers, even though her clothes were exactly the same as theirs. (My daughter is of mixed Indian/English descent). I was unwilling to expose my nursery age daughter to racial abuse from other nursery age children and have home educated her since.

Two and a half years later, she is developing into a delightful young lady with a wicked sense of humour. There is no issue about her race any more. The Local Authority advisor classes her as an early reader and she loves learning. We devour subjects for hours on end and it is a joy to be a part of her world.

Second time around and just as good

We are second generation home educators. I was home educated for my final three years of school after having attended both private and state schools in the US. I found that the opportunities and education available to me through home education were far superior to those offered in a traditional classroom environment. As a result of my experience we decided from the very beginning to home educate our children as well.

My son was diagnosed with Celiac Disease almost two years ago. As a result he is small for his age and a bit behind his peers in motor development and coordination. However, he has never been teased or bullied for being small or clumsy and mixes freely with children and adults of all ages. He struggled with reading at first, but home educating him meant that he could learn at his own pace and he is now a confident reader. I have watched my son's passion for learning blossom. He learns from his older friends, helps his younger friends to do new things and is comfortable to interact with people of all ages. Our children enjoy numerous opportunities to socialize through the clubs that they attend.

It is clear to us that home education provides a beneficial environment in which children can grow and learn, academically and socially.

Boy endures bullying and boredom as school fails to offer adequate care and education.

My son had such a terrible time at his first school nursery that I transferred him to another one. That one was no better. An extremely bright and verbal child, the noise and chaos upset him so much that he would hide. The response of the staff was to treat this as a behavioural problem. He began to wet himself and was too scared to tell anyone.

In the second school he was bullied in the playground, often by 10 year olds. He was punished in ways that any child would find traumatic; being sent at age 4 to sit in the year 6 class where all the children were instructed to ignore his tears, being made to sit in wet clothes all day during a freezing January, being refused permission to go to the toilet when he had diarrhoea and being made to sit in it all day. Because of the stress, he was constantly ill and miserable; he had high fevers and was coughing constantly. The stress had made him highly susceptible to illness.

In addition to all this, he was bored to the point of tears. By age 4 ½ he had unlearned things he knew at age 2 and was put on special needs as extremely bright and uncooperative. The school's response during frequent meetings that I had with them was not helpful and made no difference. With regards to his boredom, I was told that he should get used to being bored if he was to spend another 11 years in school.

When he was 5 years old, he was excluded for screaming non-stop. My son had cracked. He has not been back to school since. The relief when I told my son he didn't have to go again was immense. We began to rebuild our lives. At first he was unwilling to be taught anything, but he soon taught himself to read and turned out to be a very quick learner. He has an amazing memory, reads over 150 books a year and has grown into a lovely, caring, 16 year old young man.

As an ex-teacher myself I had made the mistake of assuming that I was dealing with thinking adults who cared about my child. All they cared about was their targets and ensuring conformity. As a mother, it is my duty to educate my child, and I am glad that I have the opportunity to do so at home. I do not think he would have survived had he stayed in school.

Home education chosen for benefits of personalised learning that only a loving parent can provide

My daughter is almost ten years old and has never been to school. We practice a semi-autonomous form of home education, which involves some structured classes for French, Spanish, Art, and Animation. Reading, writing and mathematics are all covered alongside, as part of day to day life. For example, my daughter learnt to read by being read to, by looking at books and by playing on a computer. She has learnt mathematics through making things, cooking and shopping. She has a lovely social life, spending time with other home-educating families as well as meeting people in the wider community. We spend a lot of time outside, learning about nature and the seasons by observation, rather than by reading books. She has the time to pursue all these and other projects free from the burden of testing.

I chose this path because I believe in my child's own inherent ability to learn and progress. I believe that each child is blessed with their own potential and that given the freedom to explore, in a loving and nurturing context, each child will find a way to reach that potential at their own pace and in their own style. I fail to see how a one-size-fits-all education system can deliver the same results as the personalised learning that a loving parent can provide.

I home-educate as a positive choice. The school system, whether right or wrong, is irrelevant to me as it is not designed to assist individuals to their full potential. The only reason I would let my child into the school system is if that were her choice. She might choose to attend in the future in order to pass public exams, but that will be her own decision and not something imposed on her by either me or the State.

Some of the many reasons why parents choose home education

This is a short summary of some of the reasons why I do not send and have never sent my 5 1/2 year old to nursery or school:

- He gets to spend plenty of time bonding / developing a close relationship with his 2 year old sister and parents.
- He is not subjected to bullying. If another child tries to bully him, or if he tries to bully another child, I am available to intervene immediately and nip it in the bud.
- He is able to do a healthy amount of activity / exercise, instead of being made to sit still for unnaturally long periods of time.
- He can learn about what he is interested in, when he is interested in it, and thus retain his love of learning and develop his decision making skills.
- He has the opportunity to socialize with children and adults of all ages, instead of being restricted to children of his own age and gender.
- He can grow his hair as long as he likes without being subjected to intolerance and sexism from his peers (his home educated friends don't judge him on his appearance).
- He can learn in a variety of different ways, using whatever educational methods work best for him, without having to worry about whether those same methods would work for 30 other children.
- He can go on 'field trips', play in the park on a sunny day, and spend a week with his uncle and aunt while they visit from America, without any worries about disrupting the school routine.
- If his baby sister has kept us all awake in the night, he can have a lie-in the next morning, or an afternoon nap if he is tired.
- He can learn free from the pressures of constant testing and SATS exams.
- He can choose what to wear, can learn to treat everyone with respect regardless of how they are dressed, and can learn that he deserves the same respect himself regardless of how he is dressed and that it's ok for people to look different.
- He can have his questions listened to and answered, without being told "we're not learning about that yet".

School Hurts, Home Heals - Why One Size Can't Fit All

We are a family with education in our blood. Both parents were educated at Durham University. I am a systems engineer, musician, and lay church leader. My wife is a sculptor, artist and social commentator, who studied psychology and philosophy. Our three children attended a local C of E Primary School where I was a parent governor. The girls went on to an excellent C of E all girls' school. This school has a faith-based ethos, great governors, fantastic staff, and is housed in twin heritage and modern sites. Few state schools could match the facilities and quality of education being received by my daughters.

But at school all was not well. Our 12 year old daughter, A, complained that school was not interesting. She then began to say with some distress, that she found fitting her mind into the academic mindset difficult, even painful. Caring staff at the school recognised the problem and arranged pastoral support, but before long A came to feel that she could not make sense of the regime of school any more. She was often reluctant to go to school, especially in the second half of terms when she seemed worn out and was frequently ill to the extent that we started getting complaints about attendance. The battle over attendance escalated until at the start of one term A admitted that she couldn't make herself go to the school and had for the last 4 days been going to Hyde Park and sitting and crying all day. She wrote this in her diary:

"I woke up, didn't feel too well, but couldn't stand another day doing nothing. Went 2 school and when I got there I hated it. I HATE SCHOOL SO MUCH. Everyone is the same. It really, really hurts me and cramps me and stabs me. I HATE it so! So when the bell went I said good bye 2 my friends and walked straight back out again! I woz going to go home but I couldn't. I had to get away from everything and just plain think. I don't know how I'm going to live through all my school years with it hurting so much. It really tears bits out of me. Big chunks of A. Fortunately they do mostly regrow but it really hurts."

A was visibly depressed and self harming. Our doctor advised that A should not be forced to attend because of the risk to her wellbeing. An Educational Welfare Officer visited and told us that despite this, the council may prosecute us for her non attendance! That same day A bought a large amount of painkillers. When we found them and asked her about them she said:

"I have felt like killing myself so often and not had the means to do it, that I wanted to be ready next time."

A never went back to school and a few weeks later we deregistered A from school. As the months of home education went by her self esteem and self management recovered. At home A was able to spend a large amount of time talking through how she felt and learning with us how to manage her moods and feelings. She studied art with her mother, taking a classic artist apprenticeship by going to museums and galleries, drawing, painting and constructing in every possible media. She studied music, fashion, design, and also worked occasionally as a model.

She also studied life – people, politics, religion, culture, media, novels, etc and talked about them with us.

A gradually settled down and learnt to cope with her intense and painful feelings. She went to college using her art portfolio and got a good GNVQ in art and design. She is now 22, lives away from home, and has worked as a florist, an artist, and an international model in London, Paris, and New York.

Her sister left school at 14 and did her GCSEs at home getting straight A's. She is currently in her third year of a textiles degree at the Chelsea College of Art. Our son B came out of primary school at age 9, and studies Math and Programming at home to the exclusion of almost everything else. He is a child with particular talents and quite likely to be one of the bright young program designers of the next generation.

To this day I believe that without an unstructured, child led, liberal concept of what home education is, my daughter would not be with us today

Late readers saved from academic failure by home education.

My son, J, was a technically minded child. He liked drawing, making things out of cardboard boxes, construction toys and clay modelling. He began school at the age of five and in spite of the teacher trying out different reading schemes; he remained uninterested in reading during his year in school. I saw a similarity between my brother and my son, both being technically minded. My brother taught himself to read from comics when he was 12. I had tried teaching my son to read before he went to school but had not been successful.

At home, after school, I tried various approaches to encourage his reading and he obediently sat with me as I went through the books with him that school had sent home. J was not at all interested in reading and could not read by the end of his first school year. Because of his late reading my brother's school days were wasted and this had a negative impact on his confidence, even though he excelled in maths. I did not want my son to have a similar experience. I decided to educate him at home and withdrew him just before his sixth birthday. My local education authority was not sympathetic because J was not yet reading. It was not until J was nearly 12 that he became interested in reading and very soon after he read fluently.

He is now a qualified joiner, sign writer and has an honours BSc in Architectural Design Technology. I believe that if my son had continued in school he would not have achieved any qualifications.

My daughters were also late readers ("retarded readers", I believe the technical description is) but have never been to school. They both learnt to read when they were 10. One has an honours degree in Fine Art and a postgraduate diploma in law and the other is halfway through a PhD in Chemistry. I am clear that educating them at home has contributed to their success as it has allowed them to learn in ways that suited them individually and at their own pace.

Boy with Down's syndrome who was failed by Local Authority is happier, healthier and a real achiever now he is home educated.

My son E is nearly 7. He has Down's syndrome and can't talk but is a proficient signer. When distressed he goes silent and curls up into a ball. He started at the village school in Reception with full signing support, a very good statement of Special Educational Needs (SEN) and plenty of funding. The children at the school were great with him, but the staff members weren't. E's Teaching Assistant restrained him unnecessarily, ignored him when he was distraught, refused to use sign language, wouldn't take E to the toilet, kept him indoors during the break, and would often drag E across the floor. The Local Authority was aware of what was happening but took no action. Their specialist teachers are not trained to deal with Down's syndrome.

Within 2 terms E became silent and withdrawn. He had lost all confidence and started wetting himself on arrival at school, despite having been dry since the age of 3. He lost all interest in books, even though reading had been one of his strengths. He also suffered from unexplained mystery illnesses, sometimes so severe that the GP arranged emergency appointments with a paediatrician.

We kept E at home for half a term, but were eventually persuaded to try a local speech & language special school. This proved a failure since the Head seemed to believe that children with Down's syndrome couldn't be educated. We tried another mainstream school, but the Local Authority had already used his funding elsewhere.

It has been a year since we started home educating E. The change in my son is quite remarkable. He is doing better than when he was at school. He is happy and confident. His academic skills and life skills have improved. His behaviour has improved dramatically and his therapies are incorporated into his everyday life, as opposed to being squeezed into 20 minutes during the school day.

Since deregistering him we've had a letter from a senior manager in the Local Authority's SEN department telling us that E should still be in his first school, as his needs were being met. His SEN Officer sees it differently and says that E is much better off now that he is being home educated. All the medical professionals E sees have commented on how much

better he's doing now and some have put their views in writing. The only professional who does not agree is the Local Authority's Elective Home Education Officer who believes children with SEN should not be home educated.

There is no way I would let any Local Authority school cause our son so much damage again and am glad that the current law allows parents to educate their children as best they see fit.

School fails to protect 13 year old from relentless and harrowing bullying campaign. Home education saves him from stepping in front of the school bus.

My middle son was 13 when we finally withdrew him from school. He was attending what was considered to be one of the best state schools in the area. Ever since joining the school aged 11, he had endured relentless bullying. He had his lunchbox stolen and stamped on, the contents of his bag emptied out of the science block window, he was rolled down a hill, shoved against the lockers by his throat, hit over the head with a chair, and was routinely slapped on the head in the corridors by a number of different children. Numerous phone calls, e-mails, and meetings with teachers and Year Heads, consistent reporting in the incident book and eventually even a transfer to a different class, made no difference. After nearly two years of relentless bullying, he had become depressed and withdrawn. He suffered from frequent stomach pain and had regular nightmares and sleepwalking episodes.

One night he told me, with tears in his eyes, "Mum, some mornings when I'm waiting for the school bus, I seriously think about stepping out in front of it."

The final straw came when he was stoned by a group of older boys in the lunch hour on school premises. The school did not inform me that this had happened, although they had known and had recorded the incident. I found out later that day from my son. We told him he didn't have to go in anymore and the relief was obvious.

We might have been breaking the law by protecting our son's welfare in this way had the proposed legislation been in place then, but there was no way we would have sent him back, knowing that the school was failing to protect him.

The idea that any plan we produced could be rejected as unsuitable by the local authority, resulting in the enforcement of a school attendance order, is unthinkable. Indeed, at that point I would have been prepared to go to prison rather than send him – but should it really be illegal to prevent a child from being in a situation that is both dangerous and detrimental to the child's mental health just because the Local Authority thinks your education plan isn't up to scratch? It would have been entirely inappropriate to set any education goals for him at that point. We knew that what he needed to do first was to recover from the two years of bullying he had endured and we gave him the time that he needed. He spent the next six months reading books in his dressing gown.

After a few months he recovered his former interest in art and has concentrated on this for the last 3 years. He is now enrolled in a 2-year BTEC Foundation Course in Art & Design. Although the college's entry requirement is 5 GCSEs, he got in purely on the strength of his portfolio and interview. His stomach aches have disappeared, as have his nightmares. He is a thoughtful, articulate and polite young man and is held in high regard by his peers who elected him Student Rep.

In my view the proposed legislation prevents parents from exercising their natural duties to protect their children from harm and safeguard their welfare and could have prevented me in exercising my duties as a mother in looking after my son.

Cintha Archer; Imran Shah. 03 Jan 2010

Summary of current laws relevant to
Elective Home Education

*Alison Sauer, The Sauer
Consultancy Limited*

Relevant Law

Right to Education

Article 2 of Protocol 1 of the European Convention on Human Rights

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

Article 28 of the UNHCR – UN Convention on the Rights of the Child

States Parties recognize the right of the child to education.....

This is the universal right to education (note that English Law denies this right to children in the secure state - section 562 Education Act 1996)

Parents' Duty to Educate

Education Act 1996 - Section 7

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

- (a) to his age, ability and aptitude, and*
- (b) to any special educational needs he may have, either by regular attendance at school otherwise.*

This means that education is the PARENTS' responsibility. They can directly fulfil this responsibility OR delegate it to the LA.

In law school is NOT the default.....i.e. **School and Home Education have equal weight in law.**

Article 29 of the UNHCR – UN Convention on the Rights of the Child

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;*
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;*
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;*
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;*
- (e) The development of respect for the natural environment.*

2.. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Education shall aim at developing the child's personality, talents and mental and physical abilities to the fullest extent. Education shall prepare the child for an active adult life in a free society and foster respect for the child's parents, his or her own cultural identity, language and values, and for the cultural background and values of others.

Principle of Parental Choice

Education Act 1996 - Section 9

In the exercising or performing all their respective powers and duties under the Education Acts, the Secretary of State, local education authorities and the funding authorities shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.

Although this part of law is often cited it should be noted it does not in reality apply to Home Education as it refers to “pupils”, which Home Educated children are not as they are not enrolled at a school.

The Child’s Voice

Article 12 of the UNHCR – UN Convention on the Rights of the Child

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The Children Act 2004 Section 53

This sets out the duty on local authorities to, where reasonably practicable, take into account the child’s wishes and feelings with regard to the provision of services. *“Section 53 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 it is not a service provided by the local authority.”* - 2007 Elective Home Education Guidelines for Local Authorities, DCSF

The child has the right to express his or her opinion freely and to have that opinion taken into account in any matter or procedure affecting the child. The parent CAN and should USUALLY be the person representing the child in this regard – it is not expected that a child should ever be questioned by authorities unless that child is willing or there is suspicion of serious welfare issues / unlawful activity which could endanger the child. Such questioning of course comes outside of the remit of “education” and so would only occur after a welfare related referral.

So, in brief as regards home education, it is the PARENT’S responsibility to take into account the child’s views.

Local Authority’s Duty to Intervene

Education Act 1996 - Section 437(1)

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

“Local authorities have no statutory duties in relation to monitoring the quality of home education on a routine basis.” 2007 Elective Home Education Guidelines for Local Authorities, DCSF
However LAs can intervene if they have good reason to believe that parents are not providing a suitable education

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

Prior to serving a notice under section 437(1), local authorities are encouraged to address the situation informally. The most obvious course of action if the local authority has information that makes it appear that parents are not providing a suitable education, would be to ask parents for further information about the education they are providing. Such a request is not the same as a notice under section 437(1), and is not necessarily a precursor for formal procedures. Parents are under no duty to respond to such enquiries, but it would be sensible for them to do so”. 2007 Elective Home Education Guidelines for Local Authorities, DCSF and case law Phillips v Brown (1980)

SAO Procedure

Education Act 1996 - Section 437(3)

If –

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

(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.

“A school attendance order should be served after all reasonable steps have been taken to try to resolve the situation. At any stage following the issue of the Order, parents may present evidence to the local authority that they are now providing an appropriate education and apply to have the Order revoked. If the local authority refuses to revoke the Order, parents can choose to refer the matter to the Secretary of State. If the local authority prosecutes 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 and efficient. The court can revoke the Order if it is satisfied that the parent is fulfilling his or her duty. It can also revoke the Order where it imposes an education supervision order.” - 2007 Elective Home Education Guidelines for Local Authorities, DCSF

Duty to Identify Children Missing Education

436A of the Education Act 1996 inserted by the Education and Inspections Act 2006

“Children not receiving suitable education”

(436A in this Act) Duty to make arrangements to identify children not receiving education

(1) A local education authority must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but—

(a) are not registered pupils at a school, and

(b) are not receiving suitable education otherwise than at a school.

(2) In exercising their functions under this section a local education authority must have regard to any guidance given from time to time by the Secretary of State.

(3) In this Chapter, “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.”

Local authorities have a statutory duty to make arrangements to enable them to establish the identities, so far as it is possible to do so, of children in their 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 being at school (for example, at home, privately, or in alternative provision).

The guidance issued (*Statutory Guidance for Local Authorities in England to Identify Children not Receiving Education*) makes it clear that the duty does not apply to children who are being educated at home

Database of All Children – The Children’s Index – “ContactPoint”

Children Act 2004 Section 12 and Information Database (England) Regulations 2007

In summary this is the intention to cause Children’s Services to create a database of all children – now called ContactPoint - in the Authority and to include details of each child’s personal information, education provision, healthcare etc along with any concerns there are about the child. ContactPoint is the file-front that serves the whole range of agencies that may be involved with a child. (It is due for deployment, initially to the “Early Adopter” local authorities in the North-West of England in September/October 2008, and to all other local authorities and national partners between January and May 2009.) It is intended to provide a complete directory of all children from birth, together with a list of the agencies with which s/he is in contact. It doesn’t hold any case records (only basic demographic and contact information including the place where the child is educated) but should enable practitioners to identify and contact one another easily and quickly, so they can, where appropriate, provide a coordinated response to a child’s needs.

Child Welfare

Children Act 2004 Section 10

This sets out a statutory framework for cooperation arrangements to be made by local authorities with a view to improving the well-being of children in their area.

Education Act 2002 – Section 175(1)

A local education authority shall make arrangements for ensuring that the functions conferred upon them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children

This does not extend local authorities’ functions. eg It does not give local authorities powers to enter the homes of, or otherwise see, children for the purposes of monitoring the provision of elective home education. There is no requirement to *ACTIVELY* monitor welfare, only to be aware of safeguarding and promoting the welfare of children in the course of carrying out existing statutory functions.

Children Act 2004 Section 11

This sets out the arrangements to safeguard and promote the welfare of children. However, this section does not place any additional duties or responsibilities on local authorities over and above section 175(1) of the Education Act 2002.

See Statutory Guidance on *Making Arrangements to Safeguard and Promote the Welfare of Children* updated April 2007

The powers above allow local authorities to insist on seeing children in order to enquire about their welfare where there are grounds for concern (sections 17 and 47 of the Children Act 1989)

The fact that a family home educates is NOT a ground for concern.

Deletion from School Register

Education (Pupil Registration) (England) Regulations 2006

8.(1) a pupil of compulsory school age shall be deleted from the admission register—
(d) ...[when]..... he has ceased to attend the school and the proprietor has received written notification from the parent that the pupil is receiving education otherwise than at school

12. (3) As to the contents of the admission register comprising particulars relating to a pupil whose name is to be deleted in accordance with regulation 8(1)(d),, the proprietor shall make a return to the local authority for every such pupil giving the full name of the pupil, the address of any parent with whom the pupil normally resides and the ground upon which their name is to be deleted from the admission register as soon as the ground for deletion is met in relation to that pupil, and in any event no later than deleting the pupil's name from the register.

The guidance which accompanies the regulations says that schools should inform their local authority as soon as they become aware of the deletion along with a minimum delay of a two working days before the deletion is made. Once the authority has had reasonable time to receive the notice, the school will make the deletion.

It should be noted that this is not preventing the deletion and the pupil cannot be prevented from ceasing to attend the school from the date given by the parent even if this does not give any notice.

Home Education has always been
legal – an essay

Carole Rutherford, Autism in Mind
(AIM)

Home education is lawful and at present it is largely unregulated.

(Taken from the explanatory notes that accompanies the current Children Schools and Families Bill)

Home education is lawful and at present it is largely unregulated – and given that home education has always been legal Governments have had a very long time indeed to find out about home education, what it is and how it works. It appears that they were never really that interested in home education until now that is.

It was not until the mid nineteenth century that schools became an option for the average family. Some churches had provided an education for children and even the odd employer but educational provision outside of the home was sparse. It was not until the 1870's that education became compulsory here in the UK and upon its arrival educating children at home started to decline. However, as far as I am aware educating your child at home has always been not only a legal option, but the responsibility has always lay with the parent to make sure that their child received an education.

It was only in 1870s that Lord Shaftesbury helped bring about a law which stopped boys being used as chimney sweeps. In the 1870s wealthy children were being taught at home by a private tutor. Boys would go off to 'public' school when they were about eight and girls stayed home to learn to sew and how to look after a home. Poor children had to work to help get money for their families. Some started work when they were five because they were small enough to crawl under and into machines to clean them. Poor children worked down the mines, in factories and if they lived in the country in the fields. Street Children quite literally lived on the streets and tried to stay alive by selling matches, flowers and lace.

Children were part of the workforce in the 1870s and being given the opportunity of going to school instead of being stuck up a chimney must have seemed like heaven for those children. These days going to school for some children makes their lives a living hell.

No one wants to go back to the 1870s but no child should be made to go to a school that is not meeting its needs. We might well have come a long way since 1870 but for some children school is simply not the right place for them to receive their education.

The whole point of an education is to gain knowledge and then to be able to apply that knowledge to enable you to live an independent life and be capable of making a living and supporting yourself.

If those of us who are educating our autistic children at home can enable and empower our children to live an independent a life as they possibly can, given that they have a life-

long disability, then many of us will feel that we have succeeded in providing our children with an education fit for life.

If our children are also able to move into a more structured educational environment, take qualifications and eventually find employment that allows them to achieve economic well-being, then the majority of us will be elated.

There is so much more to educating a child than making sure that that child ends its education with 5 GCSE grade A to C. If we really have made any progress since the 1870s then surely we must know that 'all' children are different and that we should not be trying to make them fit inside a little box, because from where I am viewing squeezing a child into a box that it does not fit into is almost as bad as squeezing a child into a chimney that it does not fit in to. Have we really learnt so very little during the last 140 years?

Some autistic children can crack the theory of relativity in their sleeps **sleep** but they can not tell you how they did so or how it works in practice. Knowledge is only power if you know how to share and apply that knowledge. **All** autistic children have impairments in their communication and socialisation skills. If those skills are not taught they will never be able to share their knowledge or use it to achieve economic well-being.

Parents might well be thrilled if their could explain the theory of relativity to them, but would that stop them from worrying that they were unable to stand in a queue long enough to purchase a loaf of bread and a pint of milk or to communicate their needs to another person. Parents who have disabled children have things that are equally as important as 5 GCSEs to aspire to for their children.

If the Government had taken the time to find out about home education during the last 140 years they would have known that sending someone into the home of an autistic child, actually I would go so far as to say any child autistic or not, to monitor educational provision and to make sure that the child is safe and well, could result in long lasting anxiety and distress and have a very negative **impact** on the emotional well-being of the child. Surely the emotional well-being of any child is all part and parcel of us making sure that the child is safe and well?

You do not use a sledge hammer to crack a nut and you do not play a safe and well card to gain entry to a home that could result in emotionally distressing a child. Many of our children have been educated at home for some considerable time some with some never having been to school at all. The impact that the new Bill is going to have on these children alone could be huge and yet the impact assessment has failed to even consider this.

The interest in home education has been building since the arrival of 'Every Child Matters'. If every child really did matter the state would have thought things through and at the very least would have carried out an impact assessment that included how some children might be affected by having people they do not know coming into their homes to monitor them.

The state has been living in ignorance for approximately 140 years regarding home education and that ignorance really is showing through now. If the Government had truly been concerned about the educational provision that we are providing for our children and if they really wanted to make sure that our children are safe and well they would have made it their business to go to the people who held the knowledge and expertise regarding home education and not handed over the job to someone who had spent the whole of their working lives working in the system.

There were people who the government could have turned to for information and advice. Those people were sidelined in favour of people whose backgrounds were steeped in classroom teaching. You would never send for a plumber to install a new electrical socket in your house. We would also need to be sure that the electrician who came to fit the socket had the right qualifications to do so.

Home Educators have been measured using the wrong yard stick and we now run the very real risk of having people entering our homes to see our children who have not been specifically trained to understand our children. No one would ever want to go back to the days when small children were used to clean chimneys or were spending their lives climbing in and out of dangerous machinery.

I would hope that no one would ever want to send a child into an environment or place them in a situation that triggered self harm and suicidal thoughts. Some of the families who are home educating their autistic children have already been in a situation where their children were self harming and suicidal because they had to go to school. How can we be sure that having people going into their homes is not going to have the same impact on the child that attending school did?

Feeling safe is a HUGE issue to an autistic child and for most autistic children their safety net is their homes and their immediate family.

Parents of autistic children are all too familiar with being in the firing line when it comes to their children. In 2002 the Department of Health sent out a publication '**Safeguarding children in whom illness is fabricated or induced**' to Doctors, Health Visitors, Hospitals etc. The majority of the symptoms that were listed as being associated with fabricated or induced illness are also signs and symptoms of autism. The National Autistic Society had to fight to have the list changed but mud often sticks and parents with autistic children continue to walk a very fine line with their children.

If parents push too hard for the correct help and support for their children in schools they are often deemed to be making more of their child's disability or are labelled as over-involved parents. Some parents are already finding that schools are sharing with social services their concerns about parents who are pushing for support.

Parents are extremely worried that local authorities with whom they have battled for provision for their children will use the home visits as a way to discredit their educational provision and to force their children back into school.

AIM has told the Department for Children Schools and Families how difficult life already is for parents trying to teach children who have often been left traumatised by their time in school but it appears that no one is listening to us.

Draft Amendments for the Children,
School and Families Bill
Schedule 1 – Home Education:
England

*Betsy Anderson & Karen McIntyre-
Bhatty, Home Education Research
Association (HERA)*

HERA – Home Education Research Association
Proposed Amendments to the Children, School and Families Bill

- *Comments or explanations are set out in blue and italics following the text commented upon, and are not meant to be part of the text.*
- *Comments in blue and brackets within the text are references to provisions on which the suggested text is based, either loosely or verbatim. These are not meant to be part of the final text.*
- *“SCR” followed by a number, refers to the specified paragraph number in the House of Commons Children, Schools and Families Committee, The Review of Elective Home Education, Second Report of Session 2009-10, published 16 December 2009.*
- *“EHE Guidelines” followed by a number refers to the specified section of the Elective Home Education Guidelines for Local Authorities issued by the Department for Children, Schools and Families in 2007*

Children, School and Families Bill
Schedule 1 – Home Education: England

Voluntary Registration

- 1 In Chapter 3 of Part 1 of EA 1996 (local authorities), after section 19 there is inserted –

“Home education: voluntary registration”

19A Maintenance of home education register

- (1) A local authority in England shall maintain a register of children of compulsory school age in their area who are not educated at a school or under section 19 and whose parents have decided to register them as such. Notification of a request for entry onto the home education register shall be voluntary for electively home educating parents.
- (2) The primary purposes of the home education register shall be:
 - a. To help identify children in the local authority’s area who are not in school because they are home educated. The home education register aims to identify home educated children, but will not identify all such children.
 - b. To enable the local authority to provide information to registered home educating families, including information concerning resources that will be available to home educating families;
 - c. To facilitate planning by local authorities of services to be made available to registered home educating families;

- d. To facilitate provision by the local authority of support and services to registered home educating families;
- e. To facilitate a dialogue and/or a working relationship between local authorities and those home educating families who wish to have such a dialogue or relationship.

19A(2) is amended to specify the reasons for maintenance of the home education register, as determined by the Select Committee Report, e.g: local authorities' desire for registration to facilitate planning (SCR 54), publicising information (SCR 63), facilitating dialogue between authorities and home educating families (SCR 169).

(3) In this Act –

- a. “Home-educated child” means a child all of whose education is provided otherwise than at a school, and not under section 19;
- b. “Home education register” means a register maintained under this section;
- c. “Parent” and “parents” shall include the singular or the plural, or the legal guardian or other person having legal responsibility for the child;
- d. A child’s education is “suitable” if –
 - i. It is efficient full-time education suitable to –
 - 1. The child’s age, ability and aptitude, and
 - 2. Any special educational needs the child may have; and
 - ii. It primarily equips a child for life within the community of which he is a member, rather than the way of life in the country as a whole, as long as it does not foreclose the child’s options in later years to adopt some other form of life if he wishes to do do. [R v Secretary of State for Education and Science, ex parte Talmud Torah Machzikei Hadass School Trust (1985) (Times, 12 April 1985).

*“Suitable” education has been defined for purposes of this Act.
A definition of “parent” and “parents” has been added to 19A(3).*

19B Notification of a request for entry on the home education register

- (1) Parents making voluntary notification of a request for entry on the home education register should provide with the notification –
 - a. A brief statement of educational approach, as described in subsection (2) below.
 - b. For each child for whom the parent requests entry upon the home education register –
 - i. The child’s full name;
 - ii. The child’s date of birth;
 - iii. The address of the child’s primary residence;

- iv. Whether the child currently is, or recently has been, registered at a school, identifying any such school, the dates of attendance, and the date of deregistration if any.
 - v. Whether the child has previously been entered on another authority's home education register(s).
- (2) The primary purpose of the statement of educational approach is to serve as a record of contact between the authority and those home educating families who wish to have such contact. [SCR 129] The statement might usefully be designed so as to demonstrate that the parent has considered fully the reasons for home educating the child, that the parent has considered the potential way or ways to provide the education, and that the parent is going to be consistently involved with the child's education. [SCR 124]

This is an amendment of 19C in the draft Schedule 1, moved to precede the section on entry of details on the home education register.

- (3) If the home educating family moves into another authority's jurisdiction, the parents may provide notification that the entry on the home education register should be removed or transferred to the home education register of another authority. In such event, the original authority shall remove the entry from their register, and, if required, forward the information with respect to the home educating family to the authority specified by the family.

19C Entry of child's details on home education register

- (1) This section applies where –
- a. The parents of a child in the area of a local authority in England have notified the authority of their choice to have the child's details entered on the authority's home education register,
 - b. The child is of compulsory school age, and
 - c. It appears to the authority that the child is, or is intended to be while still of compulsory school age, a home educated child.
- (2) The authority shall, upon receipt of a notification requesting entry of a child's details on the home education register in the form described in section 19B, enter the details relating to the child on their home education register.
- (3) If the authority have reason to believe that the child for whom registration is requested, is not receiving a suitable education, the authority shall enter the child's details on their home education register, and then proceed in accordance with Section 19E(6)-(8).

- (4) If the authority consider the child is within subsection (6), they shall enter the child's details on their home education register, and then proceed in accordance with Section 19G(6).
- (5) The authority shall give the parent notice –
- a. Of the registration, when they enter the child's details on their home education register;
 - b. Of a request for additional information, if the parent has not provided the information set forth in subsection 19B(1), specifying the additional information requested and providing a reasonable time (not less than 30 days) for provision of such information, prior to making an entry on the authority's home education register. Alternatively, the authority may make a partial entry on the home education register, and then request the additional information.
 - c. If the authority consider the child is within subsection (6), of the reasons for this, and any further action to be undertaken under the requirements of the Children Act.
 - d. If the authority has reason to believe that the child is not receiving suitable education, specifying the basis for such belief and proceeding as set forth in Section 19E(6)-(8).
- (6) A child is within this subsection if the authority have sufficient evidence to consider that it could be harmful to the child's welfare for the child –
- a. To become a home-educated child, without further protections in place as set out in the Children Act;
 - b. In the case of a child who is already a home-educated child, to continue to be a home-educated child without further protections in place as set out in the Children Act.
- (7) For the purposes of this section and sections 19B and 19D, references to entering details on an authority's home education register, in relation to details that are already on the register, include references to keeping those details on the register.

19C has been amended to emphasize and encourage the routine implementation of appropriate existing child welfare protections and procedures as enabled by the Children Act where there is significant cause for concern about welfare (or similar.)

19D Duration of registration

- (1) Subsection (2) applies if a parent of a child has made a voluntary notification to a local authority in England, of a request for the child's details to be entered on their home education register.
- (2) The child is to be treated for the purposes of this Act as being registered on the register throughout the registration period; and references in this

Act to a child being registered on an authority's home education register are to be interpreted accordingly.

- (3) The registration period begins with the date on which the notification of a request for entry of the child's details on the register is sent or submitted by the parent.
- (4) Subject to subsection (5), the registration period ends –
 - a. On the date the authority receives notice from the parent that the child is no longer being home educated;
 - b. On the date the authority otherwise learns that the child has registered with and is attending a school;
 - c. On the date the authority receives notice from the parent that they wish to have the entry concerning the child removed from the home education register;
 - d. On the date on which the child ceases to be of compulsory school age, unless the parent requests the authority to retain the child on the home education register until the home education has been completed; or
 - e. On the date on which the child is registered with a school pursuant to a school attendance order or education supervisory order.
- (5) Following the expiry of the period of 12 months from the date of the entry of the child's details on the authority's home education register, the authority may send the parent a notice –
 - a. Stating that 12 months has passed since the date of entry of the child's details upon the authority's home education register;
 - b. Inquiring whether the parent wishes to have the entry for the child remain upon the authority's home education register;
 - c. Asking whether the education situation for the child has changed, and if so asking for an updated statement of educational approach;
 - d. Specifying a period (not less than 30 days) in which the parent should respond; and
 - e. Informing the parent that, if the parent does not respond within the specified period, or such longer period as may be agreed between the parent and the authority, the authority may strike the child's details from their home education register.
- (6) If the parent does not respond to a notice pursuant to subsection 19D(5), the authority may strike the child's details from their home education register.

19D has been amended to emphasize the non-compulsory nature of the register, and the primacy of parental authority with regard to the child's home education.

19E Authorities' duties with respect to home education

- (1) The responsibility for a child's education rests with his or her parents, under Section 7 of the Education Act 1996. [\[EHE Guideline 2.3\]](#)
- (2) Parents have a right to choose to educate their children at home, or to delegate the responsibility for education to the authority, under Section 7 of the Education Act 1996. [\[EHE Guideline 2.2\]](#).
- (3) Local authorities should, so far as it is possible to do so, establish the identities of home educated children in their area who are not receiving a suitable education. Section 436A, Education Act 1996.
- (4) Registration on an authority's home education register is voluntary. Authorities do *not* have a *duty* to locate or seek out home educating families who are not registered or known to them, or to demand that all home educating families known to them apply for registration. The primary purpose of registration of home education by the authority is to enable provision of support for home educating families, not sanction.
- (5) Authorities cannot monitor the suitability of the education provided to each individual pupil by a school. Similarly, authorities have no duty to monitor, on a routine basis, the suitability of education provided to each home educated child. [\[EHE Guideline 2.7\]](#)
- (6) If, in the course of exercising their duties with respect to the home education register, or other duties as an authority, it appears to an authority that a home educated child is not receiving suitable education, the authority should make inquiries of the parents with respect to that education, as in 19F(5) below. In the course of pursuing inquiries with the parent, an authority should work toward a relationship of partnership and support, to work together with the family to address any issues that may be identified or that arise with respect to suitability of the education being provided at home.
- (7) If, after efforts to engage in a dialogue with the parents concerning the suitability of the home education being provided, and provision of support where requested, it still appears to the authority that a home educated child is not receiving suitable education, the authority 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(1) of the Education Act 1996. The period shall not be less than 15 days beginning with the day on which the notice is served. Section 437(2) of the Education Act 1996.
- (8) A school attendance order should be served under Section 437(3) after all reasonable steps have been taken to try to resolve the situation. [\[EHE Guidelines 2.10\]](#)
 - a. Prior to serving a school attendance order with respect to a home educated child, the authority should ensure that it balances the needs and interests of the child, the parents' rights and duties, the

- suitability of the education being provided at home and the suitability of any educational alternatives available to the child.
- b. Where it appears that the education being provided at home is not suitable, the authority should consider the suitability and/or effects of any previous school education received and whether alternative methods of education, such as ordering the child to attend school or an EOTAS centre, may be counter to the best interests of the child. Where, for example, home education is a response to previous trauma at school, school refusal, special needs, or failures to learn or thrive in school, it may not be possible or advisable for such alternatives to be implemented. In some circumstances, a range of support measures to assist home education may be more appropriate. **[Daniel Monk, “Regulating home education: negotiating standards, anomalies and rights, “ p 13]**
 - c. It should also be recognized that in some instances a child being subject to child protection measures would not preclude the possibility for home education **[SCR 106]**

19E is amended to emphasize the extent and limits of local authority and parental duties with regard to home educated children and to specify putting the child's interests and well being at the centre of any SAO considerations.

19F Provision of home education

- (1) A local authority in England shall exercise the functions conferred upon them with respect to home education with a view to, so far as is reasonably practicable, recognising if there are specific indications that the education provided to a home educated child is not suitable.
- (2) Home education is not required to replicate, correspond, or adhere to school education provisions, methodologies or standards. Local authorities should bear in mind that, in the early stages, parents' plans may not be detailed and they may not yet be in a position to demonstrate all the characteristics of an 'efficient and suitable' educational provision. **[EHE Guideline 3.11, quoted in SCR 131]** It should be appreciated that parents and their children might require a period of adjustment before finding their preferred mode of learning and that families may change their approach over time. **[EHE Guidelines 4.4; SCR 131]**
- (3) Authorities should recognise that there are many, equally valid, approaches to provision of home education, and that learning may take place in a wide variety of environments and not only in the home. **[EHE Guidelines 3.14, 3.4]** The type of educational activity provided in home education can be varied and flexible. Home educating parents are not required to:

- Teach the National Curriculum
- Provide a broad and balanced education
- Have a timetable
- Have premises equipped to any particular standard
- Set hours during which education will take place
- Have any specific qualifications
- Make detailed plans in advance
- Observe school hours, days or terms
- Give formal lessons
- Mark work done by their child
- Formally assess progress or set development objectives
- Reproduce school type peer group socialization
- Match school-based, age-specific standards.

However, local authorities should offer advice and support to parents on these matters if requested. [\[EHE Guideline 3.13.\]](#)

- (4) If it appears to an authority that a home educated child is not receiving suitable education, the authority must make arrangements to obtain additional information with respect to the education from the parents. The authority should not mandate the form of evidence that parents should provide, which might include –
 - a. A statement of educational approach, as in Section 19B(2).
 - b. A written report by the parents, descriptions or samples of work, endorsements of the educational provision by a third party, or evidence in another appropriate form. [\[EHE Guideline 3.6.\]](#)
 - c. If mutually agreed with the parent, a meeting or meetings with the child during the registration period, which the parent, guardian or other person primarily responsible for providing education to the child may also attend;
 - d. If mutually agreed with the parent, a meeting or meetings with the parent or, if a person other than a parent of the child is primarily responsible for providing education to the child, with that person during the registration period;
 - e. Visiting the family home, if the parent agrees to a meeting in the home.

- (5) Parents of children who are registered on an authority’s home education register may choose to provide information such as that set forth in 19F(5)(a-e) voluntarily, but they are not obliged to provide information other than a statement of educational approach unless the authority has provided written evidence establishing reason to believe that the child is not receiving suitable education. A parent’s choice not to volunteer such additional information should not be considered reason to believe that suitable education is not being provided.

- (6) The primary purpose of any arrangements under subsection 19F(4) or 19F(5) should be to offer guidance and support to and gather feedback

from families, not to inspect or impose school-based frameworks upon them. [SCR 83]

- (7) In a case where the registration period begins less than six months before the date on which the child ceases to be of compulsory school age, or where a child is being home educated on a temporary basis, the authority should exercise discretion about whether to make arrangements under subsection (4) or (5).
- (8) Under this section, voluntary meetings with the child or any other person, should be made for a mutually agreed time and place. The authority shall not request such a meeting on less than four weeks notice. If parents do not agree to meetings within subsection (4), that should not, by itself, constitute evidence that a child is not receiving a suitable education.

19G Welfare issues with respect to home educated children

- (1) Authorities should bear in mind that the suitability of education for a home educated child is a separate issue from, and must not be conflated with, issues of welfare concerning the child.
- (2) The fact that a child is being home educated does not provide evidence, in and of itself, to suspect that a child is suffering, or is likely to suffer, significant harm.
- (3) The provisions referenced in this section do not impose a duty upon authorities to *ensure* the welfare of all children. Rather, authorities must keep children's welfare in mind in exercising their functions, and take action if there is reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm.
- (4) Authorities have a general duty to safeguard and promote the welfare of all children within their area who are in need, including home educated children. Section 17(1) of the Children Act 1989.
- (5) Authorities have a general duty to make arrangements for ensuring "that their functions are exercised with a view to safeguarding and promoting the welfare of children." Section 175(1) of the Education Act 2002.
- (6) As with school educated children, child protection issues may arise in relation to home educated children. Local authority officers should focus on matters of educational provision, but be trained to identify signs of harm and know to whom to refer the family in such instances. [SCR 83] If any child protection concerns come to light in the course of engagement with children and families, or otherwise, these concerns should immediately be referred to the appropriate authorities using established protocols. [EHE Guideline 4.7]
- (7) Where there is reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm, the authority should "make such inquiries as they

consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare." Section 17(1) of the Children Act 1989.

- (8) The Children Act 2004 requires local authorities to support the reforms introduced by the Every Child Matters agenda in developing children's services. Section 10 states:
- (1) Each children's services authority in England must make arrangements to promote co-operation between [the authority and relevant parties].
 - (2) The arrangements are to be made with a view to improving the well-being of children in the authority's area so far as relating to –
 - a. Physical and mental health and emotional well-being;
 - b. Protection from harm and neglect;
 - c. Education, training and recreation;
 - d. The contribution made by them to society; and
 - e. Social and economic well-being.
- (9) The Every Child Matters agenda applies to children's services rather than to individual families. The Children Act 2004 does not impose a duty upon authorities to *ensure* that all children achieve the five outcomes discussed in the Every Child Matters agenda. Authorities must support the reforms in connection with services provided by the authority, but this does not bestow on authorities the right to see and question home educated children in order to establish whether they are receiving a suitable education. [\[EHE Guideline 2.16.\]](#)
- (10) Authorities in England shall make arrangements in order to ascertain, so far as is reasonably practicable, the child's wishes and feelings about their education provision, ensuring those views may be expressed freely without coercion by the authority, and safely, and be given due weight in accordance with the age and maturity of the child. (UNCRC 12)
- a. This must include respect for a child's choice to exercise their right not to provide such information.
 - b. A child's decision not to provide information regarding his or her wishes and feelings about his/her education provision does not constitute a cause for concern about that child's welfare or educational provision.
 - c. Indication by a child that it is the parents' wish that the child be home educated does not provide cause for concern about that child's welfare or educational provision any more than indication by a child that it is the parents' wish that they be educated at school.
- (11) When attempting to ascertain the wishes and feelings of the child, authorities must give due regard to the responsibilities, rights and duties of parents or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of his or her rights. (UNCRC5/14)
- a. The authority should presume, in the absence of specific evidence to the contrary, that the parents respect and have duly considered and balanced the wishes of their child along with other relevant factors, in

exercising their parental duties and responsibilities with respect to providing suitable education for their child.

- b. The authority must respect the primacy of the parent/child bond, and exercise care not to undermine the parent/child relationship or bond, in connection with any arrangements under 19G(10).

This section accords with SCR 73: “The Department should take the opportunity provided by the Children, Schools and Families Bill to provide a definitive, succinct statement of the applicability of the Children Act 2004 and the Every Child Matters outcomes to home educated children.”

With respect to subsection 10(b), in the same way that a school child indicating that it is the parents’ wish that the child attend school would not be indicative of a problem, it should not be seen as indicative of a problem if a home educated child were to say that it is the parents’ wish that the child is home educated.

[19G Appeal against authority’s decision] -- omitted

This section in the CSF bill should be deleted. Under the proposed amendments, there is not provision for removing or revoking registration. Removing or revoking registration indicates removal of permission to home education, and permission is inconsistent with a system under which registration is voluntary. Where there are issues with home education being provided or with home educating families, they should be handled with the existing SAO procedure or existing welfare procedures.

19H Supply of information for purposes of home education functions

- (1) Authorities may, if the parent of a home educated child agrees, request from a person within subsection (2) for the purposes of the exercise of their home education functions, additional information about a child of compulsory school age –
 - a. Whose name has been deleted from the register maintained by the proprietor of a school in England under section 434 because the child is, or is to be, a home educated child, and in respect of whom a notification has been made for registration on the authority’s home education register, or
 - b. In respect of whom a notice, or a school attendance order, has been served by a local authority in England under section 437.
- (2) The persons within this subsection are –
 - a. A local authority in England, and
 - b. In relation to a child within paragraph (a) of subsection (1), the proprietor referred to in that paragraph.

- (3) An authority’s “home education functions,” in subsection (1), means their functions under or by virtue of sections 19A to 19H.

19I Coerced deregistration

- (1) Schools must not seek to persuade parents to home educate their children as a way of avoiding an exclusion, because the child has a poor attendance record, or to avoid a potential drop in reported standards for attendance/ examination pass rates, and authorities must discourage this practice.
- (2) In the case of exclusion, schools must follow applicable statutory guidance. If a pupil has a poor attendance record, the school and authority should address the issues behind the absenteeism and must use the other remedies available to them. **[EHE Guideline 3.12]**

This section is inserted to address the serious issue of coerced deregistration, which properly is a schools issue, where schools misuse deregistration to serve school purposes, without fully considering parents’ wishes or circumstances, or the child’s interests.

19J Home education register: statutory guidance

In exercising their functions under or by virtue of sections 19A to 19J, a local authority in England shall have regard to any guidance given from time to time by the Secretary of State.

In section 580 of EA 1996 (index), at the appropriate place there is inserted –
“home educated child section 19A(3)
home education register section 19A(3)”

[436ZA Duty to make arrangements to identify children not receiving education, etc: England] -- omitted

There is no need to make changes to Chapter 2 of Part 6 of EA 1996 (school attendance) by inserting 436ZA before section 436A. With a voluntary register, the definition of children missing education as children who are not on an authority’s home education register is not appropriate. It is not appropriate, in any event, to discriminate between home educated children and other children educated otherwise than at school.

[437 School attendance orders] -- omitted

The proposed revisions to Section 437 of EA 1996 (school attendance orders) should not be made because –

- (1) They discriminate unfairly between home education and other forms of education otherwise than at school.*
- (2) It is improper to prevent courts from considering the suitability of education provided at home, when considering a school attendance order served on the parent of a home educated child. Suitability of education is the defining standard of the right to home educate.*
- (3) The changes are not needed under the proposed amendments concerning the home education register. The current law relating to school attendance order suffices..*