

Agenda – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Hybrid meeting – Committee Room 3, Senedd, and video conference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 12 June 2023	0300 200 6565
Meeting time: 13.30	SeneddLJC@senedd.wales

1 Introductions, apologies, substitutions and declarations of interest

(13.30)

2 Evidence Session with the Office for the Internal Market

(13.30 – 14.30)

(Pages 1 – 24)

Murdoch MacLennan, Chair of the Office for the Internal Market Panel

James Waugh, Director, Office for the Internal Market

Attached Documents:

LJC(6)-18-23 – Paper 1 – Research Briefing

3 Inter-Institutional Relations Agreement

(14.30 – 14.35)

3.1 Correspondence from the Counsel General and Minister for the Constitution: Inter-Ministerial Group for Elections and Registration

(Page 25)

Attached Documents:

LJC(6)-18-23 – Paper 2 – Letter from the Counsel General and Minister for the Constitution, 2 June 2023



3.2 Correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd and the Minister for Climate Change: Inter- Ministerial Group for Environment, Food and Rural Affairs

(Pages 26 – 27)

Attached Documents:

LJC(6)-18-23 – Paper 3 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd and the Minister for Climate Change, 6 June 2023

3.3 Written Statement and correspondence from the Minister for Rural Affairs and North Wales, and Trefnydd: The Agriculture and Horticulture Development Board (Amendment) Order 2023

(Pages 28 – 29)

Attached Documents:

LJC(6)-18-23 – Paper 4 – Written Statement from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 June 2023

LJC(6)-18-23 – Paper 5 – Letter from the Minister for Rural Affairs and North Wales, and Trefnydd, 7 June 2023

3.4 Written Statement and correspondence from the Minister for Health and Social Services: Healthcare (International Arrangements) (EU Exit) Regulations 2023

(Pages 30 – 33)

Attached Documents:

LJC(6)-18-23 – Paper 6 – Written Statement from the Minister for Health and Social Services, 7 June 2023

LJC(6)-18-23 – Paper 7 – Letter from the Minister for Health and Social Services, 7 June 2023

3.5 Written Statement and correspondence from the Minister for Economy: Ministerial Forum for Trade

(Pages 34 – 36)

Attached Documents:

LJC(6)-18-23 – Paper 8 – Written Statement from the Minister for Economy, 7

June 2023

LJC(6)-18-23 – Paper 9 – Letter from the Minister for Economy, 7 June 2023

4 Papers to note

(14.35 – 14.40)

4.1 Written evidence submitted by the Bevan Foundation to the Children, Young People, and Education Committee and the Equality and Social Justice Committee: Illegal Migration Bill

(Pages 37 – 47)

Attached Documents:

LJC(6)-18-23 – Paper 10 – Written evidence submitted by the Bevan Foundation

4.2 Correspondence from the Deputy Minister for Mental Health and Wellbeing: Healthy Food Environment

(Page 48)

Attached Documents:

LJC(6)-18-23 – Paper 11 – Letter from the Deputy Minister for Mental Health and Wellbeing, 8 June 2023

5 Correspondence relating to the Welsh Government's Elective Home Education Statutory Guidance

(14.40 – 14.45)

(Pages 49 – 89)

[Written Statement: Elective Home Education Statutory Guidance](#)

Attached Documents:

LJC(6)-18-23 – Paper 12 – Correspondence to the Legislation, Justice and Constitution Committee

6 Motion under Standing Order 17.42 (vi) and (ix) to resolve to exclude the public from the remainder of the meeting

(14.45)

- 7 Evidence Session with the Office for the Internal Market:
Consideration of Evidence**
(14.45 – 14.55)
- 8 Legislative Consent Memorandum on the Non-Domestic Rating
Bill**
(14.55 – 15.10) (To Follow)
Attached Documents:
LJC(6)-18-23 – Paper 13 – Draft report
- 9 Legislative Consent Memorandum and Supplementary Legislative
Consent Memorandum (Memorandum No. 2) on the Illegal
Migration Bill**
(15.10 – 15.25) (To Follow)
Attached Documents:
LJC(6)-18-23 – Paper 14 – Draft report
- 10 Supplementary Legislative Consent Memorandum (Memorandum
No. 5) on the Online Safety Bill**
(15.25 – 15.30) (Pages 90 – 92)
Attached Documents:
LJC(6)-18-23 – Paper 15 – Legal Advice Note
- 11 International agreements**
(15.30 – 15.35) (Pages 93 – 97)
Attached Documents:
LJC(6)-18-23 – Paper 16 – Research briefing
- 12 Consideration of correspondence relating to the Welsh
Government's Elective Home Education Statutory Guidance**
(15.35 – 15.50)

Document is Restricted

Mick Antoniw AS/MS
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

Agenda item 3.1


Ein cyf/Our ref DC/CG/00060/23

Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS,
Chair
Legislation, Justice and Constitution Committee
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SeneddLJC@senedd.wales

02 June 2023

Dear Huw

I am writing in accordance with the inter-institutional relations agreement to let you know that I will be representing the Welsh Government at an Inter-Ministerial Group for Elections and Registration on 14 June. The discussion is likely to focus on reflections on the May local government elections in England and changes made by the Elections Act 2022.

The meeting will be held virtually and, on this occasion, I have agreed to Chair following the agreement to rotate chairing arrangements between Ministers. Other attendees will be George Adam MSP, Minister for Cabinet and Parliamentary Business, Scottish Government, Steve Baker MP, Minister of State at the UK Government's Northern Ireland Office, and Baroness Scott of Bybrook OBE, the UK Government's Parliamentary Under Secretary of State for Faith and Communities.

I will write again following the meeting.

Yours sincerely



Mick Antoniw AS/MS
Gwnsler Cyffredinol a Gweinidog y Cyfansoddiad
Counsel General and Minister for the Constitution

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Agenda Item 3.2

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

Julie James AS/MS
Y Gweinidog Newid Hinsawdd
Minister for Climate Change



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee
Huw.Irranca-Davies@senedd.wales

6th June 2023

Dear Huw,

In accordance with the inter-institutional relations agreement, we wish to notify you a meeting of the Inter- Ministerial Group for Environment, Food and Rural Affairs was held on 22 May 2023.

The meeting was chaired by Lorna Slater MSP, Minister for Green Skills, Circular Economy and Biodiversity, The meeting was also attended by Mairi Gougeon MSP, Cabinet Secretary for Rural Affairs, Land Reform and Island, Dr Therese Coffey, Secretary of State for Environment and Rural Affairs, Alistair Jack MP, Secretary of State for Scotland; James Davies MP, Parliamentary Under-Secretary of State for Wales; Rebecca Pow, Secretary of State for Environment Quality and Resilience; and Mrs Katrina Godfrey, Permanent Secretary in absence of Northern Ireland Minister

The Secretary of State for Defra gave an update on the UK Biodiversity Framework and plans for the UK response to the Kuming Montreal Global Biodiversity Framework.

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We discussed the Scottish Government's request for an exclusion to the UK Internal Market Act for its Deposit Return Scheme. The Secretary of State for Scotland requested further work to be completed before an exclusion could be considered despite proper framework processes being adhered to by the Scottish Government. We expressed our significant concern additional processes were being added outside the Common Framework process.

We then discussed the UK Government's intention to introduce a ban on wet wipes containing plastic. This proposal has been made at pace with little consideration of joint working. Given our shared ambition to address the issue of wet wipes, we stressed the benefits of working together and using the mechanism of the common frameworks process.

The next agenda item was on the Retained EU Law (Revocation and Reform) Bill where the Secretary of State for Defra updated us on the latest UK Government plans. We raised the need for transparency on the impacts of the Bill on areas of devolved competence and clarity regarding potential divergence as a result of the Bill.

Finally, Scottish Government gave a presentation on their vision and ambition for the Blue Economy.

The next meeting will be held on Monday 26 June.

A communique regarding this meeting will be published on the UK Government website at <https://www.gov.uk/government/publications/communique-from-the-inter-ministerial-group-for-environment-food-and-rural-affairs>.

Regards,



Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd
Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales ,
and Trefnydd



Julie James AS/MS
Y Gweinidog Newis Hinsawdd
Minister for Climate Change

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WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	The Agriculture and Horticulture Development Board (Amendment) Order 2023
DATE	07 June 2023
BY	Lesley Griffiths, Minister for Rural Affairs and North Wales, and Trefnydd

The Minister for Rural Affairs and North Wales, and Trefnydd has given her approval to the Minister for Biosecurity, Marine and Rural Affairs for the Agriculture and Horticulture Development Board (Amendment) Order 2023 (the Order) to be made in the UK Parliament.

The Order will be made by the Secretary of State in exercise of powers conferred by sections 87, 88 and 97(1) of, and paragraph 6(a) of Schedule 8 and paragraphs 5 and 8 of Schedule 10 to, the Natural Environment and Rural Communities Act 2006(a).

The Order amends the Agriculture and Horticulture Development Board Order 2008 (S.I. 2008/576) (2008 Order) which established the Agriculture and Horticulture Development Board (AHDB) and requires it to impose levies to deliver services in certain agricultural sectors. The Order will:-

- Amend the Ministerial approvals process for levy rates
- Allow for the ability to set a zero-rated levy if needed to respond to sector emergencies
- To clarify the term of office of the Chair or a Board member, which can be for up to two terms and no more than eight years in total. This will bring it in line with Cabinet Office guidelines
- Amend levy deduction provisions to be consistent and more flexible across all sectors
- Extend the scope of AHDB to work with other (non-levy paying) agricultural sectors across the UK
- Ensure cereals or oilseeds levy must be paid within 30 days of receiving the levy invoice.

The Order was laid before Parliament on 6 June 2023 to come into force 21 days after it is made.

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LG/1347/23

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

7th June 2023

Dear Huw,

Following my letter of 26 May 2023, I am writing to inform you [my consent](#) has been granted for the Agriculture and Horticulture Development Board (Amendment) Order 2023 and the Order has been laid in the UK Parliament. The Order will make changes to the Agriculture and Horticulture Development Board Order 2008 (AHDB Order).

The Agriculture and Horticulture Development Board (AHDB) was established by the AHDB Order under powers contained in the Natural Environment and Rural Communities Act 2006 (the NERC Act).

The 2023 Order amends the 2008 Order and is made by the Secretary of State under powers conferred by sections 87, 88 and 97(1) of, and paragraph 6(a) of Schedule 8 and paragraphs 5 and 8 of Schedule 10 to, the NERC Act with the approval of Welsh Ministers.

Regards,

Lesley Griffiths AS/MS
Y Gweinidog Materion Gwledig a Gogledd Cymru, a'r Trefnydd
Minister for Rural Affairs and North Wales, and Trefnydd

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WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Healthcare (International Arrangements) (EU Exit) Regulations 2023**

DATE **7 June 2023**

BY **Eluned Morgan AS/MS**
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Members of the Senedd will wish to be aware that the Secretary of State is exercising a subordinate legislation-making power to make regulations which include provision in a devolved area in relation to Wales.

Will Quince MP, Minister of State for Health and Secondary Care, is to make a UK wide Statutory Instrument (SI) titled the Healthcare (International Arrangements) (EU Exit) Regulations 2023 (“the HIA Regulations”).

The above titled SI will be made by the Secretary of State in exercise of powers conferred by the Healthcare (International Arrangements) Act 2019 (“the Act”) (formerly titled the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 but to be renamed by section 162 of the Health and Care Act 2022, once commenced).

The SI makes provision to give effect to International Healthcare Agreements between the UK Government and Rest of World Countries and other commitments concerning the provision of such healthcare and for related purposes. Aspects of the HIA Regulations are within devolved competence.

The regulations were laid before Parliament on 5 June 2023 and will come into force immediately after section 162 of the 2022 Act comes into force. UK Government officials have advised the Welsh Government that this is likely to be this summer.

Any impact the SI may have on the Senedd’s legislative competence and/or the Welsh Ministers’ executive competence

None.

The Senedd Members will wish to note that the Regulations do not transfer any functions to the Secretary of State.

The purpose of the regulations

As stated, the HIA Regulations will be made in exercise of powers conferred on the Secretary of State by the Act. The main enabling power will be contained in section 2 of the Act. Under section 2A of the Act the Welsh Ministers may also make certain provision by regulations equivalent to that which the Secretary of State can make using section 2, although not all provision and only where the provision is within devolved competence.

The HIA Regulations will replace the UK legal framework for implementing healthcare arrangements provided for in existing regulations, the Healthcare (European Economic Area and Switzerland Arrangements) (EU Exit) Regulations 2019 (“HEEASA Regulations”), which are made in relation to the provision of reciprocal healthcare in EEA states and Switzerland, including the making of payments. The HEEASA Regulations also place duties on public authorities in Wales to give effect to reciprocal healthcare arrangements with the European Union (EU), European Economic Area Countries and Switzerland.

The HIA Regulations are to a large extent similar to the HEEASA Regulations, but broaden the scope of the legal framework to healthcare agreements between the UK Government and Rest of World countries. The HIA Regulations:

- enable payments to be made pursuant to a reciprocal healthcare agreement by the Secretary of State on a UK wide basis;
- enable payments to be made by the Secretary of State in exceptional circumstances on a UK wide basis;
- impose a requirement to give effect to obligations and commitments of the UK under relevant healthcare agreements, including the processing of maternity planned treatment functions, on UK NHS Business Services Authority (NHS BSA);
- impose information and advice functions on NHS BSA;
- list Rest of World Countries party to international healthcare agreements with the UK;
- impose S2 planned treatment functions on NHS England, Welsh Local Health Boards and Scottish health boards (i.e. to carry out clinical determination of applications and to establish and publish procedures for the determination of S2 applications, which include provision for a review process).

Some of aspects of the HIA Regulations could be made all or in part by provision contained in regulations made by the Welsh Ministers under section 2A of the Act.

The Regulations and accompanying Explanatory Memorandum, setting out the detail of the provisions, purpose and effect of the amendments is available here:

[The Healthcare \(International Arrangements\) \(EU Exit\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2023/1000/contents/making)

Why agreement has been given

I have agreed that the UK Government make provisions in the HIA Regulations on behalf of Wales in an area of devolved competence for reasons of pragmatism, efficiency and legal clarity.

Firstly, the SI has been considered fully, and our policy position in this regard is currently the same as the UK Government's. I do not anticipate this changing and the provisions of the HIA Regulations thus align with our policy. Should our policies in this area diverge in the future we have the power under section 2A of the Healthcare (International Arrangements) Act 2019 to make our own regulations to implement certain changes in Wales, provided those changes are within devolved competence, the scope of which is prescribed by section 2A(2) and (4)(b) of the Act. Thus, having the UK Government make this provision for Wales is not detrimental to current or future Welsh policy in this area.

Secondly, this approach also ensures a coherent and consistent statute book with the regulations being accessible in a single instrument.

Thirdly, each time the UK Government enters into a new healthcare agreement with a country or territory, the HIA Regulations will need to be amended to add that country or territory to the Schedule on a UK wide basis, to give effect to and implement the agreement across the UK. Given that UK Government intends to seek agreements with a number of countries in the coming years, there could be a necessity for an ongoing series of amendments to be made to the Schedule. The UK Government will be required to amend the Schedule each time they enter into a new healthcare agreement, at least in relation to England. As the UK Government also has the competence to amend the Schedule on a UK wide basis, it is pragmatic and efficient for them to apply any such amendment to Wales, given that an equivalent amendment would be required in relation to Wales in any event.

Finally, the impact on the LHBs of listing such agreements in the HIA Regulations is likely to be extremely low and I thus consider legislating separately for Wales when a new agreement is required to be listed would be neither the most appropriate way to give effect to the necessary changes, nor a prudent use of Welsh Government resources given other important priorities.

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair,
Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

7 June 2023

Dear Huw

I refer to my letters to you of 25 April and 2 June 2023. I am writing to inform the Committee that the Secretary of State has laid the Healthcare (International Arrangements) (EU Exit) Regulations 2023 ("the HIA Regulations"). I have laid a Written Statement in this regard which can be found at:

[gen-ld15871-e.pdf \(senedd.wales\)](#).

The Regulations were made by the Secretary of State, in exercise of the powers conferred by the Healthcare (International Arrangements) Act 2019.

The Statutory Instrument (SI) is subject to the affirmative procedure and was laid before Parliament on 5 June 2023.

I have written similarly to Russell George MS, the Chair of the Health and Social Care Committee.

Yours sincerely

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

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WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE Ministerial Forum for Trade
DATE 07 June 2023
BY Vaughan Gething, Minister for Economy

In accordance with the inter-institutional relations agreement, I can report to Members that I attended the Inter-Ministerial Forum for Trade on 25 May.

The meeting was attended by:

- Minister Huddleston Minister of State at the Department for Business and Trade.
- Minister Lohead Scottish Minister for Small Business, Trade, and Innovation.
- Minister Davies Parliamentary Under Secretary of State, Wales Office.

The Ministerial Forum for Trade provides the primary forum to discuss matters of trade policy between the UK government, Northern Ireland Executive, Scottish Government and Welsh Government.

In the forum, we discussed the latest updates on the ongoing Free Trade Agreement negotiations with India and Canada and the Memoranda of Understanding with a number of US States. A joint communique regarding the meeting will be published in due course.



Ein cyf/Our ref DC/VG/00469/23

Paul Davies MS
Chair of Economy, Trade, and Rural
Affairs Committee
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Huw Irranca-Davies MS
Chair of Legislation, Justice and Constitution
Committee
SeneddLJC@assembly.wales

7 June 2023

Dear Paul, Huw

I am writing in accordance with the inter-institutional relations agreement, to inform you that I attended the Ministerial Forum for Trade on the 23 May.

The meeting was attended by Nigel Huddleston, Minister of State at the Department for Business and Trade; Richard Lohead, Scottish Minister for Small Business, Trade and Innovation and James Davies, Parliamentary Under Secretary of State, Wales Office. A joint communique regarding the meeting will be issued in due course.

We discussed the latest updates on the India and Canada Free Trade Agreement negotiations as well as the latest developments in the Memoranda of Understanding between the UK and a number of US states, some of which are completed and some of which are at negotiation stage.

Minister Huddleston indicated that he would arrange for the new departmental structure and ministerial responsibility for DBT to be shared with Devolved Governments, I can ensure this is shared with you if you would find it useful.

The meeting provided me with the opportunity to give our views on the current negotiations with India and Canada. I continued to emphasize our view that any trade agreement must support our wider policy aims, including in areas such as the environment and labour. I have always been clear that no trade deal should undermine the high standards we have here in Wales.

For both India and Canada, I also reiterated our view that while we understand there are likely to be trade-offs in any agreement, the UK Government should ensure that any market access agreed for these deals should not impact on important sectors in Wales such as agriculture and steel.

I will write to you again to inform you of the date of the next meeting.

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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

Vaughan Gething AS/MS
Gweinidog yr Economi
Minister for Economy

Evidence submitted by the Bevan Foundation to the Children, Young People, and Education Committee and the Equality and Social Justice Committee as they consider their response to the Legislative Consent Memorandum laid in respect of the Illegal Migration Bill (referred to below as 'the Bill').

This document is written in reference to the amended Bill as at 1 June 2023 (HL Bill 133)

Key points

- The Bill runs counter to the vision of Wales as a Nation of Sanctuary and to the Child First, Migrant Second approach that underpins the delivery of support to asylum-seeking children in Wales.
- The Bill makes provisions in the devolved area of social care in Wales.
- The Bill introduces powers that conflict with local authority duties under the Social Services and Well-Being (Wales) Act 2014.
- The Bill is incompatible with the international obligations of the UK, and Wales as a devolved government, under the 1951 UN Refugee Convention, the European Convention on Human Rights (ECHR), the UN Convention on the Rights of the Child (UNCRC), and the Council of Europe Convention on Action Against Trafficking in Human Beings.
- The Bill contravenes the Rights of Children and Young Persons (Wales) Measure 2011.
- The Bill fails to consider the best interests of the child.
- The Bill makes provision within the devolved competence of the Senedd. We urge the Committees to recommend that the Senedd refuse legislative consent.

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Evidence

1. Overview: our view of the Bill

- 1.1 This is a response to the Committees' invitation to give evidence regarding the issue of legislative consent for the Illegal Migration Bill. It focuses on aspects of the Bill which require legislative consent from the Senedd.
- 1.2 The Bevan Foundation has broader concerns about the Illegal Migration Bill and its impact on human rights, the UK constitution, and the rule of law. The Bill runs counter to the Nation of Sanctuary principles and undermines the vision of Wales as a country where people seeking sanctuary "[are met with welcome, understanding, and celebration](#)".
- 1.3 The Illegal Migration Bill is not compatible with the obligations of the UK and Wales under international law.
- 1.4 The Bill's scope is broad. It removes the right to seek refugee protection for people arriving by irregular routes. It curtails the jurisdiction of the High Court in relation to decisions on detention and in certain circumstances limits the effects of judicial review. It provides extensive powers to the Home Secretary to repeal, amend, and revoke existing legislation and to implement further changes to law with minimal Parliamentary scrutiny.
- 1.5 The speed at which the legislation is being progressed is concerning, particularly given limitations that it will place on the courts and legislature to exercise their vital functions to challenge and constrain Executive powers.

2. Separated/unaccompanied children in Wales

2.1 Background

- 2.1.1 [StatsWales](#) shows that in 2022, local authorities in Wales looked after 110 unaccompanied children.
 - Every local authority in Wales looks after at least one unaccompanied child.
 - Numbers of unaccompanied children in Wales are likely to rise as transfers and asylum dispersals increase.
 - 30% of unaccompanied children in the UK are aged 15 or under.

2.1.2 In this document we use the term ‘unaccompanied children’ for clarity. We stress that there is no distinction between an unaccompanied child and any other child, other than their circumstances and life experiences.

2.2 Key concerns

2.2.1 Most unaccompanied children are forced to use irregular routes to seek protection in the UK due to the lack of regular routes. The Bill penalises children because of the way in which they are forced to seek protection.

2.2.2 More - and more consistent - support is needed for unaccompanied children and young people in Wales. We support the call for a [national guardianship scheme for all unaccompanied children in Wales](#) and ready access to expert legal advice and representation.

3. Implications for the care and support of children

3.1 Background

3.1.1 In line with the Social Services and Well-Being (Wales) Act 2014, unaccompanied children in Wales are treated as looked-after children.

3.1.2 Unaccompanied children are likely to have additional support needs. The Welsh Government briefing, [Supporting unaccompanied asylum-seeking children in Wales](#), states:

“These children are likely to be at heightened risk of exploitation or abuse and are less able to access education or opportunities to build social relationships with peers because of linguistic barriers.”

3.2 Key concerns

3.2.1 Unaccompanied children in Wales already face unacceptable risks. Children recently abducted from hotels in Sussex and Kent [have been found in North and South Wales](#). When the Home Office placed 87 asylum-seekers in a Snowdonia hotel last year, amongst residents were [15 young people in need of local authority care](#).

3.2.2 Without robust assessment procedures, appropriate care, and continuity of assistance and support extending beyond their period in care, unaccompanied children are at heightened risk of abduction, trafficking, and exploitation. It is vital for their well-being that the duty and power to provide care, support, and assistance remains with the local authority.

3.2.3 The following elements of the Bill would severely impact the welfare of children and young people and clash with duties conferred on local authorities by the Social Services and Well-Being (Wales) Act 2014.

3.3 Duty to remove care leavers from the UK

The current law:

3.3.1 [Part 6 of the Social Services and Well-Being \(Wales\) Act](#) places a [duty on local authorities](#) to provide support to care leavers. This recognises that young people leaving care need ongoing support, assistance, and contact.

3.3.2 The duty to support continues beyond the age of 18 where a young person has been in local authority care for 13 weeks or more before their 18th birthday.

The proposed law:

3.3.3 Clause 2(1) places a duty on the Home Secretary to arrange the removal of adults from the UK if they arrive by irregular routes. This duty would apply to young people on reaching the age of 18 and would result in the compulsory deportation of unaccompanied care leavers.

3.3.4 The duty would extend to children with family members in the UK, even where those families have been granted humanitarian protection and are recognised refugees.

3.3.5 The Bill severely restricts rights of appeal and limits the basis for legally suspending removal. It introduces a shortened procedure requiring a person to seek legal advice and make a claim within 7 days. The Home Office must reach a decision within 3 days.

3.3.6 Asylum claims of young people subject to the duty to deport would be declared inadmissible. Support and protections under the Modern Slavery Act 2015 would be removed. The duty to deport would apply even if a young person is a victim of trafficking, or where there is a human rights application or judicial review.

3.3.7 The legislation would restrict future grants of visas, settlement, and citizenship for anyone who has ever been subject to the duty to remove.

The impact:

- 3.3.8 The legislation would create conflicting duties on the part of the Home Secretary and local authorities in respect of 18-year-old care leavers who have been accommodated as unaccompanied children. It would render impossible local authority support for unaccompanied care leavers.
- 3.3.9 Pending deportation would have considerable impact on the emotional well-being of unaccompanied children throughout their period in care.
- 3.4 Powers to remove unaccompanied children from the UK

The current law:

- 3.4.1 The Social Services and Well-Being (Wales) Act 2014 places duties on local authorities towards children in need of care and support. These are:
- a duty to assess needs (Section 21)
 - a duty to meet care and support needs (Section 37)
 - a power to meet care and support needs (Section 38)
- 3.4.2 When looking after unaccompanied children, the local authority has an overarching duty to have due regard to Part 1 of the United Nations Convention on the Rights of the Child (UNCRC).
- 3.4.3 Under Section 28 of the Children Act 2004, local authorities and other statutory bodies have a duty to [work together to safeguard children](#) and young people. Section 47 places a duty on a local authority to make inquiries where it suspects that a child is at risk.
- 3.4.4 [Welsh Government guidance](#) states that when encountering an unaccompanied child, a local authority must consider whether they are at risk of serious harm. They should assess whether a child has been trafficked.
- 3.4.5 The duty to protect and safeguard children is a permanent duty and applies whether or not the child is in local authority care.

The proposed law:

- 3.4.6 Under Clause 3 of the Bill, the Home Secretary would have the power to remove unaccompanied children from the UK before they are 18.

3.4.7 The UK Government's [Illegal Migration Bill: children factsheet](#) (updated 11/05/2023) makes clear that the intention is to deport some children before they reach 18, and that children will be forcibly held in accommodation (detained) prior to removal. The circumstances in which they can be removed can be amended by regulation.

The impact:

3.4.8 The Home Secretary's power to remove unaccompanied children, coupled with extended detention powers (see 3.5 below), would conflict with the local authority duties of assessment and safeguarding. It would restrict the power of local authorities to meet unaccompanied children's needs through care, accommodation, and support.

3.4.9 In opposition to the Child First, Migrant Second approach, the proposed legislation places a child's position as a migrant and their mode of entry to the UK above their status as a child.

3.4.10 The Bill does not prioritise the welfare of the child or make provision for paying due regard to individual children's needs. It makes no reference to assessment of needs or protecting children's rights.

3.5 Extension of detention powers

The current law:

3.5.1 Detention of unaccompanied children is currently limited, under the Immigration Act 2014, to 24 hours in a "short-term holding facility".

3.5.2 [Home Office Enforcement Instructions and Guidance](#) currently lists unaccompanied children under the age of 18, pregnant women, and victims of trafficking, as among those unsuitable for detention.

The proposed law:

3.5.3 Clause 10 of the Bill gives the Home Secretary the power to detain a person "of any age", "in any place" considered appropriate, including unregulated settings. It removes existing statutory time limits on the detention of families with children, unaccompanied children, and pregnant women.

3.5.4 Clause 11 provides for the detention of unaccompanied children. Children may be detained while a decision on removal is reached, pending removal, or while a decision is made about whether to grant leave to remain.

The impact:

- 3.5.5 The Bill reverses the UK Government’s commitment to end child detention. It removes important safeguards for children and vulnerable adults and allows for the detention of victims of child trafficking and slavery.
- 3.5.6 The Bill does not specify time limits for detention. It gives the Secretary of State powers (though no duty) to specify time limits on detention via regulation rather than by primary legislation.
- 3.5.7 The Bill limits court oversight for detention, with no recourse to the courts for the first 28 days.
- 3.5.8 [The BMA has called](#) on “MPs and peers to oppose the bill on medical and ethical grounds”, particularly in relation to clauses enabling the indefinite detention of children.

3.6 Age assessment

The current law:

- 3.6.1 Age assessment falls under the devolved area of social care in Wales. Local authorities currently have responsibility to assess whether a person is a child and in need of care.

The proposed law:

- 3.6.2 Clauses 55 and 56 relate to the National Age Assessment Board and provide for scientific methods of age assessment, which may include scanning, X-raying, or measuring parts of the body, checking teeth, DNA sampling, and physical examination.
- 3.6.3 The Bill withdraws the right to appeal against an age assessment decision. The decision may be judicially reviewed but a child may be removed while judicial review is in progress. The Bill allows for a child to be treated as an adult if they refuse to consent to scientific methods.

The impact:

- 3.6.4 Treating children as adults is a major safeguarding risk and a flagrant breach of their rights. Traumatized children are more likely to refuse to submit to the invasive methods under consideration.

- 3.6.5 Scientific methods are not accurate in determining age. These measures are invasive and traumatic for children. The British Association of Social Workers (BASW) objects to both scientific methods and the establishment of the National Age Assessment Board.
- 3.6.6 Establishing the National Age Assessment Board in Wales would clash with the existing duty of social workers to assess the age and needs of unaccompanied children.
- 3.6.7 It is unethical to expose children to radiation from X-rays without medical cause or to subject them to unnecessary physical examinations.

3.7 Power to direct local authorities to transfer children from their care

The current law:

- 3.7.1 3.3.1, 3.4.1, and 3.4.3 above outline the duties of local authorities to assess, care for where required, and meet the needs of, unaccompanied children.

The proposed law:

- 3.7.2 Clauses 15 to 18 enable the Home Secretary to override the local authority duties to care for and support children. They give the Home Secretary powers to order local authorities to provide information about a child or to order a local authority to hand over a child. This power could be used to detain children prior to deportation but is not limited to this purpose.
- 3.7.3 These powers will be enforceable through courts regardless of any local authority assessment of a child's needs. This directly conflicts with local authority duties under the Social Services and Well-Being (Wales) Act 2014.

3.8 Power to make regulations to repeal or amend Welsh law

The proposed law:

- 3.8.1 Powers granted to the Home Secretary under Clauses 15 to 18 initially apply only in England. However, Clause 19 enables the Home Secretary to make regulations extending their application to Wales and to override Welsh law.
- 3.8.2 Clause 19(2) enables these regulations to "amend, repeal, or revoke any enactment" and 19(4) clarifies that this includes legislation previously or concurrently passed in the Senedd.

- 3.8.3 Clause 3 gives the Secretary of State the power to make consequential amendments to any Act or Measure of the Senedd.

The impact:

- 3.8.4 These clauses have substantial implications for Welsh law, particularly for the Social Services and Well-being (Wales) Act 2014 and the Rights of Children and Young Persons (Wales) Measure 2011.

4. Children's rights and human rights in Wales

- 4.1 Rights of Children and Young Persons (Wales) Measure 2011 and the UN Convention on the Rights of the Child (UNCRC)

The current law:

- 4.1.1 [The Rights of Children and Young Persons \(Wales\) Measure 2011](#) embeds the UN Convention on the Rights of the Child into Welsh law and places a duty on Ministers to have due regard to the Convention when exercising their functions. Decisions must be informed by a robust Children's Rights Impact Assessment. The Convention prioritises commitment to the best interests of the child and sets out key fundamental rights.

- 4.1.2 Article 2 of the UNCRC clarifies that Convention rights apply to all children. State signatories are required to respect and protect these rights:

“...irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

The proposed law:

- 4.1.3 The Bill impacts on the ability of unaccompanied children in Wales to exercise their right to seek refugee protection. It disregards legal protections afforded to children under international law and commitments made under the Council of Europe Convention on Action Against Trafficking in Human Beings. Clause 2(1) risks breaching a child's right to family reunion.

The impact:

- 4.1.4 The Illegal Immigration Bill is not compatible with the Rights of Children and Young Persons (Wales) Measure 2011 or the UN Convention on the Rights of the Child.

4.1.5 The [Children’s Commissioner for Wales](#) has expressed strong objections to the Illegal Immigration Bill on the grounds of children’s rights:

“Wales is a proud nation of sanctuary. This legislation, if passed, flies in the face of everything we stand for as a nation of sanctuary and is in clear breach of our human rights obligations.”

4.2 Committee on the Rights of the Child

4.2.1 On 2nd June, The UNCRC Committee on the Rights of the Child published the [Concluding Observations](#) (findings) of its combined sixth and seventh periodic report of the UK. The Committee highlights deep concerns about the potential impact of the Illegal Migration Bill on children.

4.2.2 The Concluding Observations call on the UK to “urgently amend” the Illegal Migration Bill”, removing provisions that would violate children’s rights and the UK’s international obligations, particularly:

- the “ban on the right to claim asylum”;
- provisions allowing for prolonged detention and removal of children;
- barriers to acquiring nationality; and
- lack of consideration of “the principle of the best interests of the child”.

4.2.3 The Committee also calls on the UK to:

- end “unreliable and invasive” age assessment procedures, ensure that children can challenge assessment outcomes, and have access to legal advice;
- ensure that age-disputed children are not removed to a third country;
- ensure children’s unqualified right to apply for family reunification;
- ensure child victims of trafficking always have access to relevant services; and
- “develop a consistent, statutory system of independent guardianship for all unaccompanied children”.

4.3 European Convention on Human Rights (ECHR)

4.3.1 Much has been written about the Bill’s negative impact on human rights. The [UNHCR has referred to the legislation as an “asylum ban”](#) and many agencies have raised human rights concerns. [A briefing from the Joint Council of the Welfare of Immigrants \(JCWI\)](#) summarises these concerns.

4.3.2 The human rights group [Liberty's response to the Illegal Migration Bill](#) highlights how different aspects of the Bill work together to enable primary legislation to be changed without reference to human rights.

4.3.3 The [Equality and Human Rights Commission](#) warns of six areas where the Bill risks breaching the UK's legal obligations and risks placing individuals in danger of increased harm.

- Undermining the principle of the universality of human rights (Clauses 1(5), 2 and 4).
- Removal of protections for victims of trafficking (Clauses 21-28).
- Restriction of the right to asylum and penalising refugees (Clauses 4, 11-14 and 29-36).
- Risk of breaching the ECHR and the principle of non-refoulement under the Refugee Convention (particularly Clauses 37-49).
- Detention, particularly of children (Clauses 3, and 11-15).
- Insufficient consideration of the impact on equality.

4.3.4 The Commission has also expressed concern at the lack of time allocated for parliamentary scrutiny of the Bill.


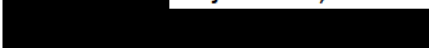
5. Recommendations

5.1.1 The provisions in the Bill fall within the devolved competence of the Senedd in the areas of social care and children's rights. We therefore recommend that the Bill requires legislative consent from the Senedd.

5.1.2 In the Legislative Consent Memorandum laid on 31 March and the supplementary LCM of 26 May 2023, the Minister for Social Justice stated that she could not recommend that the Senedd give consent to provisions within the Bill that lie within the devolved competence of the Senedd.

5.1.3 We urge the Committees to accept the Minister's position and to recommend that legislative consent be withheld in respect of these elements of the Bill.

For further information please contact:

 Project Lead, Access to Justice


Agenda Item 4.2

Lynne Neagle AS/MS
Y Dirprwy Weinidog Iechyd Meddwl a Llesiant
Deputy Minister for Mental Health and Wellbeing



Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS,
Chair, Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

08 June 2023

Dear Huw

You will be aware that I consulted last summer on exploring proposals relating to supporting a healthier food environment in Wales. I published a summary of the findings in January [Healthy Food Environment – Summary of Responses](#), where we received extensive engagement across the public, organisations and with the food industry. I now intend to deliver an oral statement on 27 June which will outline the Welsh Government position in relation to price promotions and locations.

I am writing to give you early notification of my intention to deliver an oral statement to the Senedd, and to bring forward secondary legislation in 2024. I am happy to engage with you and the Committee around the statement and would welcome your views on what engagement would be of use to you and other members to support your scrutiny work.

I look forward to hearing your views following the statement and working together on this important area.

I have also sent a letter to the Chair of the Children and Young People's Committee and the Chair of the Health and Social Care Committee.

Yours sincerely,

Lynne Neagle AS/MS

Y Dirprwy Weinidog Iechyd Meddwl a Llesiant
Deputy Minister for Mental Health and Wellbeing

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Submission 1

FAO: LEGISLATION, JUSTICE AND CONSTITUTION COMMITTEE

The Minister of Education has released new Statutory Guidance for Home Education (12th May 2023).

Whilst the guidance has some limited understanding of home education. The document contains many contradictions, and questionable requirements for Local Authorities making it an unworkable, counterproductive document for both Local Authorities and home educators.

Local Authorities and home educators would like to have a mutually respectful co-operative relationship. The underlying tone and content of this document, in its current form, does not aid in that relationship.

The community has previously funded legal opinion and a rebuttal, which we ask you to consider.

This has previously been sent to the committee and can be viewed again here <https://business.senedd.wales/.../LJC6-07-23%20-%20Paper>

The Education Department's civil servants are unable to tell us which sections of the guidance are statutory and which are non statutory, despite drafting the guidance.

The Children's Commissioner has voiced she was 'disappointed [with the lack of] an evaluation plan to be published alongside any new guidance' (The Children's Commissioner for Wales, 16th May 2023)

Whilst we as parents and carers do not have appropriate legal knowledge on what is considered lawful. The guidance appears rushed with many errors that are most questionable in this regard and so we ask that the committee launch an urgent enquiry into the home education statutory guidance that has been published, in order for the document to be thoroughly scrutinised to ensure it has been appropriately assessed and due process has been followed.

Yours sincerely,

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

Submission 2

To the Legislation, Justice and Constitution Committee

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Kind Regards

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

Submission 3

I am writing with regards to the new home education guidance that has been published on Friday.

As a home educating parent in Wales, I am deeply concerned about the new guidance, as is every home educator we know. The new regulations are very intrusive and the wording of the guidance is very negative towards home education, which will not help to develop positive working relationships between parents and the LA. The new guidance is disproportionate. There is no evidence that home educated children are at risk, and the millions of pounds that this intrusive monitoring is proposing is a complete waste of money, which I am sure could be much better used to improve the quality of children's lives and education.

Please see the legal advice that was sought on the matter by the home educating community here.

[LJC6-07-23 - Paper 18 - Letter from Families First in Education Wales 21 February 2023.pdf \(senedd.wales\)](#)

I can understand visits if there is a concern about a child or family, but for us parents who dedicate our lives to ensuring that our children are happy and receive an excellent education, this is not only unnecessary and of no benefit to us whatsoever, but completely intrusive and detrimental to their education. As I am sure you can appreciate, it is pretty full-on home educating and our time is very precious. Trying to fit in their school work each day, along with their groups that they attend every day and meeting with their friends etc. Having to waste precious hours on gathering evidence, writing reports and preparing things for a stranger (likely without teaching qualifications) to judge is of no benefit to our children and will waste a huge amount of time that should be spend on educating our children instead. The beauty of home education is that their education is for them and not to show someone else. I work with them every day so I know exactly what they know or need extra work on, without the need for recorded evidence of this. I feel our right to a private family life is being invaded.

There are also those children with special educational needs or other complex issues, who do not want to talk to strangers entering their homes and this will cause a great deal of anxiety and stress to those families unnecessarily.

I hope that the guidance can be fully debated and that a lot of this can be changed. I believe that the current guidance already serves the needs of ensuring children are receiving a suitable education in a far less intrusive and negative way that the new proposed guidance.

Yours Sincerely,

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

Submission 4

Dear Sir/Madam,

We are writing to express our grave concern about the recent changes to Elective Home Education (EHE) Guidance in Wales. As dedicated Home Educators of our children____, we believe the new legislation undermines not only our children's rights to a suitable education based on their needs and preferences but also the entire legal basis under ECHR Article 8 under which all government regulations and guidance has previously been drafted and regulated.

The ideological and philosophical views which we feel are better promoted through Elective Home Education are grounded in the European Convention on Human Rights Article 8 which protects family life and children's rights from the overt intrusion by Social Services and Government Departments which this new legislation actively promotes.

The range of reasons listed by the British Government for Elective Home Education include not only these ideological or philosophical views, but also a dissatisfaction with the school system, mental health, bullying and children unwillingness to go to school. All of which are in our view systemic issues in the school system itself.

As it is also clear from Elective Home Education (EHE) Guidance that the government curriculum is new, this new guidance seems to attempt through the back door to impose government guidance as to what is taught how and when. The change from Educational regulation through school to educational regulation by LA/Social Services will lead to unqualified personnel making decisions over what is an appropriate education for children who are being Home Educated.

The [GOV.UK](https://www.gov.uk) guidance clearly states:

"2.11 There are no legal requirements for you as parents educating a child at home to do any of the following:

- Acquire specific qualification for the tasks
- Have premises equips to any particular standard
- Aim for the child to acquire any specific qualification
- Teach the National Curriculum
- Provide a "broad and balance" curriculum
- Make detailed lesson plans in advance
- Give formal lessons
- Mark work done by the child
- Formally assess progress, or set development objectives
- Reproduce school type peer group socialisation
- Match school base, age specific standards"

As it would appear that the new Welsh Government legislation directly contradicts the above listed provisions, it is questionable how the courts of England and Wales will decide upon the matter until which time this leaves parents in limbo with no time to adjust or properly address their legal and educational concerns.

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

As there has been no effort prior to this legislation to consult constructively with the numerous and dedicated Elective Home Education Families in Wales and beyond, it is entirely understandable that Home Educated feel this legislation to be unsupportive of the underlying educational basis not only of our own educational approaches but also of the rights to Home Education per se.

As Home Education is a huge commitment for our family and others alike and in the absence of any negative outcome for Home Educated children, it is deeply questionable why the Welsh Government does not engage into a constructive dialogue as to how Home Educated can be supported than undermine and if their concerns are regarding the increase removal of children from school to be Home Educated then their time and the extensive resources that the legislation will require would be far better spent reforming what issues parents feel led to their disenfranchisement with the school system as it stands.

Surely obtaining such insight and reforming schools where necessary would be far more fruitful and constructive than giving LA/Social Services carte blanche to coerce children back to school against their own and parents/carers wishes.

Home Education is about so much more than not attending school, and this legislation provides little scope for understanding and holistic educational approach and children's wider welfare. School classes of up to 30 children do not represent either an optimal education environment or the healthy socialisation of children. Such an environment and educational approach encourages bullying, competition and fear of failure as well as not being responsive to children's individual rates of learning nor their specific interest.

It is unfathomable how Social Services are meant to interpret and enact this new legislation, given their limited resources without grossly undermining the safeguarding provided by ECHR Article 8 upon which the basis of our civil society in post war Britain has been built.

To sum up, it would appear this new legislation has been poorly thought through and swiftly enacted with little consideration for the basis on which Home Education has been successfully based upon since its inception and the protection granted to Home education under existing laws and ECHR Article 8. We as a family together with others in the Home Education Community will continue to Home Educate in the best interest of our children and seek protection from the courts if necessary to challenge any unlawful intrusion or imposition of this legislation which contradict the existing law and protection quoted above.

Yours sincerely,

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

Submission 5

Dear Sir/Madam,

The Minister of Education has released new Statutory Guidance for Home Education (12th May 2023).

Whilst the guidance has some limited understanding of home education. The document contains many contradictions, and questionable requirements for Local Authorities making it an unworkable, counterproductive document for both Local Authorities and home educators.

Local Authorities and home educators would like to have a mutually respectful co-operative relationship. The underlying tone and content of this document, in its current form, does not aid in that relationship.

The community has previously funded legal opinion and a rebuttal, which we ask you to consider. This has previously been sent to the committee and can be viewed again here <https://business.senedd.wales/documents/s134220/LJC6-07-23%20-%20Paper%2018%20-%20Letter%20from%20Families%20First%20in%20Education%20Wales%2021%20February%202023.pdf>

The Education Department's civil servants are unable to tell us which sections of the guidance are statutory and which are non statutory, despite drafting the guidance.

The Children's Commissioner has voiced she was 'disappointed [with the lack of] an evaluation plan to be published alongside any new guidance' (The Children's Commissioner for Wales, 16th May 2023)

Whilst we as parents and carers do not have appropriate legal knowledge on what is considered lawful. The guidance appears rushed with many errors that are most questionable in this regard and so we ask that the committee launch an urgent enquiry into the home education statutory guidance that has been published, in order for the document to be thoroughly scrutinised to ensure it has been appropriately assessed and due process has been followed.

Many thanks,

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

Submission 6

Hello,

I am writing with my concerns about the new home education guidance, I have highlighted a few points but feel that the guidance needs further review throughout and as such should be paused and not implemented.

Firstly, how will the register be created? Will it be a legal requirement? I fear that there are some data protection issues to address with the current proposals.

The guidance seems to undermine parental primacy in our children's lives as the education of a child is the responsibility of the parents.

I question the EHE officers ability to assess the suitability of a child's education with an once a year visit and wonder not only how this will be implemented, but if it will lead to further invasion of our family lives and alter the way that many educators support their children once there is the need for evidence. In addition to that what is deemed suitable evidence and progress, who determines this?

The insistence that the child/children participate in the meetings is also unwarranted, if there are no concerns why would an individual have the right to demand a meeting with them? Does the child/children and their parents not have the right to decide who they meet with?

The local authorities are already over stretched how will they be able to support home education or is this just an exercise to create a register and an assessment process? If so what benefit is this to anyone?

The guidance even goes as far to say that there is no appeals process upon assessment, this is also very concerning.

The home education community is a vibrant and active community providing enriching, fulfilling lives for our children. Home education is not missing in education and I object home education being treated as a red flag. There are so many ways that the local authority could choose to support this community and yet choose to register and check them. I feel the money spent on this register should be put to better use helping children in need through our underfunded and over stretched social services, schools and NHS.

I look forward to your reply.

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

Submission 7

To the Chair of the Committee

The Minister of Education has published new Statutory Guidance for Home Education (12th May 2023).

Whilst the guidance has some limited understanding of home education. The document contains many contradictions, and questionable requirements for Local Authorities making it an unworkable, counterproductive document for both Local Authorities and home educators.

Local Authorities and home educators would like to have a mutually respectful co-operative relationship.

The document, in its current form, does not aid in that relationship.

The community has previously funded a legal opinion and rebuttal, which we ask you to consider. This has been sent to, and accepted by, both the Legislation, Justice and Constitution Committee and Children, Young People, and Education Committee.

The Education Department's civil servants are unable to tell us which sections of the guidance are statutory and which are non statutory, despite drafting the guidance.

The Children's Commissioner has voiced she was 'disappointed [with the lack of] an evaluation plan to be published alongside any new guidance' (The Children's Commissioner for Wales, 16th May 2023)

Whilst we as parents and carers do not have appropriate legal knowledge on what is considered lawful. The guidance appears rushed with many errors that appear questionable in this regard. Therefore, we ask that the committee launch an urgent enquiry into the home education statutory guidance that has been published, in order for the document to be thoroughly scrutinised.

Best wishes

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

Submission 8

Good Afternoon,

I am writing to ask if you would launch an enquiry into the recently published guidance on Elective Home Education.

I am especially concerned about the potential unlawfulness of this on several points including data sharing.

Thank you so much for your attention to this matter.

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

Submission 9

We request the above [Request for an enquiry to be launched into the recently published home ed guidance] for the following rationale:

1) the workability of the guidance, putting more pressure on the Local Authority when they already have resource and capability issues. Resourcing should be used to support families in crisis due to the education departments lack of knowledge, expertise and care, pushing them into crisis while children attended mainstream (for those children who have been removed from mainstream because of the failure of the LA)

2) Increasing numbers of home educated children have negative experiences of the education body due to the LAs lack of understanding of anything from attachment difficulties, trauma, to ASD.

Having them in the home, interrogating children as to what they have done, whether they are 'happy' and the general traumatic experience of having someone new involved in their lives would be inappropriate for most children in this situation and probably result in a backlash of negative behaviour and harmful anxiety attacks, self harm and depression.

It is not workable, appropriate or necessary.

3) I would add that while the children are obviously the main consideration, the pressure and stress that such visits would put on parents and carers could be huge. This would be both in the respect of the suggested meetings etc and the aftermath of supporting the children and helping them manage their behaviours, where they had been settled and building strategies to help anxieties.

4) lawfulness of such actions

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

Submission 10 a

Dear Members of the Legislation, Justice and Constitution Committee,

I am writing to request that the Legislation, Justice and Constitution Committee launches an urgent enquiry to examine the lawfulness of the newly published Elective Home Education Guidance (May 2023) <https://www.gov.wales/elective-home-education-guidance>.

I and many other families in Wales are extremely concerned about many aspects of the new guidance, especially those which would appear to act to undermine the primacy of the parent in having responsibility for the child's education. It introduces a number of measures which amount to unjustifiable public authority interference in legitimate private activities, including the recommendation for children to be interviewed outside their parents' consent.

In addition, the stated proposal to "have data sharing agreements to facilitate cross checking of children entering statutory provision against partner databases (such as early years, childcare teams and health)" and the intention to cross reference health databases with educational ones without consent raises huge implications in regards data sharing.

I have attached both the full and summary version of the legal rebuttal of the unjustifiable use of the UN Convention of the Rights of the Child by Sally Holland, the then Children's Commissioner for Wales, in her February 2021 "Review of the Welsh Government's exercise of its functions". Although it was submitted by Families First in Education Wales to Jeremy Miles as Minister for Education in October 2021, no formal response has been issued.

A copy of the report by David Wolfe QC which was previously commissioned by Protecting Home Education Wales (PHEW) in response to the 2019 consultation by the Welsh Government is also attached.

I urge you to challenge the unlawfulness of the guidance, as demonstrated in these reports.

Yours sincerely,

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Submission 10 b

I can confirm that I am content for my correspondence to be included as a paper to note. I would also like to have included the following drawn from some of my family's own experiences:

Most families who home educate have, at some time or other, experienced being treated with disrespect and suspicion simply for being different – simply for exercising our right under the law to choose how our children are educated. The Welsh government appears intent on causing us further harm by stigmatising our situation through repeatedly conflating our educational approach with safeguarding issues and implying that there is an inherent problem with us simply due to our children's learning not taking place in school. This is discriminatory and insulting and clearly projects that Wales is a country that does not value or respect diversity in individuals, family life or in education.

However, this guidance really does mark a new low in the lack of respect and understanding towards home educators and home education from a Welsh government which has repeatedly asserted the belief that all children should be in school. The WG guidance has its basis in a presumption that home educating parents are not putting their child's education first and that parents have to provide evidence to prove that they are not guilty of neglecting their duty. This effectively sets us up as guilty until proven innocent.

The state's right to intervene is only lawful when there is reason to believe that suitable education is not taking place; this guidance effectively calls for parents to be examined by the state for evidence of failure, using our children as the source of that evidence. This mandate is accompanied by a fundamental disrespect and ignorance of home education philosophies and diversity of approach. It is not sufficient or acceptable to merely pay lip-service to an understanding of this – the Welsh government just acknowledging that there are varied approaches to education outside of the institution of school is not sufficient to even begin to approach empathising with the lived experiences of home educating families. It is also very difficult to remove an inbuilt bias towards what to expect to see or hear from a child when most council EHE officers have had previous careers as school teachers.

This school-biased thinking was highlighted in the Senedd Plenary of 6th June by the Minister for Education himself when he referred to us as parents who “teach at home” – most home educators in the UK would rigorously object to their role being described as teaching their children, in the same way that we repeatedly have to explain that most of us do not “home-school”; we are enablers, facilitators, mentors and supporters of our children's education and we often learn collaboratively alongside our children. But how would the education minister know that when he and other influencers (e.g. Estyn) only have experience of the school system where

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children are taught and schooled and produce a predictable, measurable output?

The Minister for Education also spoke in a contradictory manner about meetings with children not being mandatory but then emphasised that seeing and talking with the child is how the suitability of an education is to be judged. And of course if the parent/child do not consent then prosecution and a school attendance order can follow. As I'm sure you are aware, there is no appeals process in place.

Is this supportive? My youngest child, _____, certainly does not feel supported by this guidance - he feels threatened and fearful of it and those who are behind the thinking. He is aware of being part of a minority in society and how governments in the past have been guilty of huge injustices towards minorities.

I find it somewhat ironic that I had observed, in recent years, the beginnings of a more friendly and supportive role from our local education authority through provision of a variety of events, workshops and activities for home educating families. Unfortunately, in the last 12 months these provisions have largely disappeared (I assume that funds are now redirected in readiness for the new monitoring roles) and our local college, _____, has announced that it is no longer accepting external exam candidates.

In light of the above, do you believe it possible, as has been suggested by Trefnydd Leslie Griffiths, that the new guidance "will provide an opportunity for the local authority to develop a positive relationship with families"?

Thank you again for taking the time to hear our concerns.

Yours sincerely,

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

Submission 11

I am emailing to ask that the Senedd ensures the Welsh Government guidance on Elective Home Education is paused and not implemented until the Senedd has had full chance to scrutinise the unlawfulness and impact of the guidance.

Yours faithfully

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

Submission 12

To Whom It May Concern,

I am writing to ask that you launch an inquiry into the new home education guidance which I believe to be illegal and discriminatory.

I attach relevant legal advice.

The intention to move the responsibility for education from parents to the State and the implication that children can be forced into meetings are not within the scope of the current law. Applying such intrusion into family life and parental responsibility only to a certain group of people based on a parenting decision seems to me to be a form of discrimination.

Please ensure that these issues are properly looked into and that the guidance is paused until it is done so.

Yours

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Submission 13

To whom it may concern

Please could I request as a home educator that you could assist myself & other home educators in Wales?

It would be very much appreciated if you would use your legal support to challenge the unlawfulness of the new statutory guidance for elective home educators recently published by the Welsh Assembly Government.

I have attached 3 reports proving that this guidance is not fully compliant with the law for your viewing. Many thanks

Submissions to the Legislation, Justice and Constitution Committee regarding the Welsh Government's Elective Home Education Guidance, June 2023

Submission 14 a

Dear Mr Irranca-Davies and fellow members of the Legislation, Justice and Constitution Committee.

I write to formally request that your committee fully investigates the newly published Welsh Government guidance on Elective Home Education, particularly on areas of unlawfulness, including how it would place duties on Welsh Local Authorities to act unlawfully.

I request that, as well as your own deliberations, you draw on legal advice in scrutinising the guidance and fulfilling the responsibilities of the Senedd to hold the Welsh Government to account.

This will necessarily take some time to allow adequate scrutiny and to ensure that Welsh Government does not proceed with unlawful statutory legislation.

Therefore I request that the Committee instruct that **this guidance is not implemented or progressed until there has been full and formal scrutiny of is by the Senedd.**

I request that in scrutinising the guidance, you give full consideration to the **two reports of David Wolfe QC** attached, which, for example, clearly and repeatedly demonstrate how insistence that every child has to be "seen" is unlawful. Likewise, I ask for full consideration of any subsequent legal reports submitted to Welsh Government and/or the Committee.

In addition I ask you to full appropriate the legal points in the **attached formal rebuttal** of the former CCfW report on EHE in Wales.

I request that the Committee's investigations also address

- the issues of the requirement to provide evidence in every case to prove innocence in the absence of specific concerns in individual cases. How the guidance is based on the assumption that parents are considered to be not honouring their children's rights, not allowing their voices to be heard and not providing a suitable education until the parent and child prove themselves to be.
- the mistaken assumption that the State has a duty to ensure every child has a suitable education, which was explicitly stated in multiple communications from the Welsh Government in trying to justify these proposals and which is implicit throughout. This misassumption leads to a reversal of the lawful principle that education is the responsibility of the parent, not the state.
- the implications for the state becoming liable for failures in education if it is shifting the balance of power and assuming the role of being the one that is responsible. At present parents cannot sue schools for failures because education is the responsibility of the parent not the state and if a child is in school it is because the parent has chosen to put them there.
- how parents and children are not "free" to decline meetings when under threat of legal proceedings and social services involvement if they do so. coercion is not informed consent.

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- the assumption that choosing not to accept a coerced meeting deemed necessary purely because of a lawful choice of educational approach is an automatic safeguarding concern requiring social service involvement; please investigate the lawfulness and the significant impact of this on law-abiding families and on the diversion of already overstretched social service resources away from those children who are genuinely in need.
- how the expectations of what has to be provided for a EHE child are significantly different from LA provision for EOTAS children.
- the discriminatory aspects of how school children will not be similarly interviewed about their feelings, opinions and beliefs of their school-based education and moves put in place to transition them to home education if they express that is their preference, as treating EHE as lesser than school based education is contrary to the Education Act.
- how children's rights, including those to privacy, are being misinterpreted or ignored.
- the lack of advocacy for families and children coerced into non-consensual interviews that have major legal and personal implications for each child, the lack of appeals process.
- the lack of due process for insisting on non-consensual or coerced interviews. At present, a child can only be interviewed without free parental consent if there is a court order demonstrating significant and reasonable risk of harm in that individual case. Generic non-consensual coerced interviews with whole sections of society purely on the basis of their lifestyle choice or philosophical ethos are not lawful.

Furthermore I ask you to investigate **if due process has been followed** in preparing and laying out this guidance. for example:

- The consultation process was not completed, with meetings cancelled due to Covid and not rescheduled and complaints from home educators regarding the conduct of those meetings that were held not addressed.
- Likewise could the Committee investigate if all the appropriate assessments have been conducted and to an appropriate standard, such as RIA.
- I am also aware that the present CCfW had requested a full evaluation plan would be conducted and published in association, however this has not been the case.

I also ask you to give due consideration to the following points and questions regarding **data protection and data sharing issues** - This list of data issues is also attached as a separate document.

1. 3.7 – are routine ISPs for LAs to share data about children in other LAs lawful if the child is NOT deemed at specific risk? That is, it is lawful to share data between LAs in the absence of specific risk and purely because they are home educated?

2. 3.11 – is it lawful for police and “professionals” to share data about children with other agencies purely because they are home educated and in the absence of any specific risk of harm?

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3. 3.11 Is the wording on “*professionals*” too loose here? Does that mean that it is acceptable for doctors, dentists etc to inform the LA that a child is home educating in the absence of any specific concerns of risk but purely because they are home educating?

4. 3.13 is it lawful for LAs to “***have data sharing agreements to facilitate cross checking of children entering statutory provision against partner databases (such as early years, childcare teams and health)***” and to do so routinely for all children rather than in specific cases if there were evidence of concerns about individual children? Please note that they intend to cross reference HEALTH databases with educational ones without consent. This would be a deterrent from those who wish to avoid coerced, mandatory and likely unlawful meetings with LAs from placing themselves and their children onto health databases and thus accessing health care.

5. 3.14 and 3.15 – these points conflate the concepts of CME with an EHE child where the LA know that the child is EHE not CME but then may not know the location of that child if they move homes. Is data sharing acceptable and lawful if the EHE child who has moved home is not deemed a child at risk?

6. 3.16-3.19 – are these measures lawful and is it lawful for LAs to use them routinely to identify any children who are home educated in the absence of risks about individual children?

7. 4.19-4.30 –

a. Is it lawful for the LA to request such large volumes of data and information from families in the absence of specific risk or concern in each case? Please note they would routinely request information from **every** child and parent (not only where there is specific consideration of risk) on

i. Education

ii. Socialisation and social opportunities

iii. The child's beliefs and opinions about their family life in terms of their choice of educational approaches.

b. It is lawful for LAs to do so when the families are providing this information not “freely” but under coercion of threats of legal proceedings such as school attendance orders and social services involvement if they do not agree to meetings and to providing whatever information the LA request?

c. 4.28- 4.29. Whose property is whatever is done by the child in the course of their learning? (Sometimes termed “work” in the guidance, although many forms of home education do not

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involve "work" in terms of replicating school-like "work" as is alluded to earlier in the guidance).

- i. Should a child of the age of consent be forced or coerced into sharing information about or examples of their learning or "work".
- ii. Should a child who is not able to give consent due to age or ALNs be forced or coerced into sharing information about or examples of their learning or "work"?
- iii. Should a parent be forced or coerced into sharing examples of learning or "work" that their child has done?

8. 4.39-4.41 – should there be any protections on

- a. In terms of what this written report contains - should there be an independent body to assess any disputes about the relevance, validity and accuracy of the content?
- b. Who this report can be shared with and how it can be used?
 - i. especially how can the information in such a report be used when the parents and children would not have consented to provide the information but for coercive effect of threats of legal action such as SAOs and social services involvement
 - ii. and/or if the LA plan to use the report without consent of the family?

9. (side point 6.9-6.12 – is there any need for clarity that data should not be shared with these bodies without consent?)

10. 7.21 "Data protection legislation allows for the sharing of information and should not be automatically used as a reason for not doing so. One of the specific circumstances which provides for information sharing is to prevent abuse or serious harm to others. When information is not shared in a timely and effective way, decisions made may be ill informed and lead to poor safeguarding practice and leave children at risk of harm."

- a. What data legislation are they referring to? Is this phrasing likely to lead LA employees to disregard laws and rules on data sharing and privacy? Is this phrasing mean that data sharing without consent to be used as a general principle rather than an exception in individual cases where there is a justifiable and demonstrable reason to do so?

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b. Is there evidence of clarity of what is meant by "serious harm" either in this guidance or in an appropriately rigorous training programme for LA employees utilising this guidance?

c. Should the public have sight of all training and procedures for when data sharing is and is not considered appropriate? Should that information be clarified by Welsh Government in their guidance or left to individual LAs? If the latter, who is accountable to ensuring all are compliant with the law?

Yours,

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Submission 14 b

The fact that the LJC is going to consider whether to scrutinise the EHE guidance further certainly is a great relief, especially after the dreadfully unhelpful statements in the Senedd today, where Mr Miles both stated that meetings are not mandatory but also said that, in his opinion and therefore according to his guidance, that education cannot be deemed suitable without such interviews.

Thus it is clear that according to Mr Miles and this guidance, we cannot exercise both our lawful right to refuse meetings and also exercise our equally lawful right to home education - that we are only allowed one or other of our lawful rights but cannot have both in his opinion.

Please would you also consider the attached open letter [Submission 14c], compiled by a fellow home educator and signed by a number of key figures in the fields of progressive education and safeguarding, that expresses deep concerns regarding the guidance.

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Submission 14 c

To:

Re: Elective Home Education Guidance May 2023 (288/2023)

Parents and carers – not local authorities – bear responsibility for provision of a child's education. This is established both in primary legislation¹ and in human rights frameworks as the UN Special Rapporteur on education stated in 1999:2

“The objective of getting all school-aged children to school and keeping them there till they attain the minimum defined in compulsory education is routinely used in the sector of education, but this objective does not necessarily conform to human rights requirements. In a country where all school-aged children are in school, free of charge, for the full duration of compulsory education, the right to education may be denied or violated. The core human rights standards for education include respect of freedom. The respect of parents' freedom to educate their children according to their vision of what education should be has been part of international human rights standards since their very emergence.”

This ill-thought through guidance upends this principle, requiring local authorities to assess the provision of education and a child's progress, relegating the views of parents and carers as secondary to that of the state. Assuming assessment duties is no minor administrative updating of guidance but instead represents a fundamental shift in the relationship between state and family, the repercussions of which are seismic.

Nor does the guidance address the practicalities of how local authorities are to meaningfully take this responsibility from parents. While parents and carers know their children, see their progress or struggles up close, know what they are interested in and what they want to do local authority staff do not know these children. Within a school setting, children are able to be assessed because of the uniformity of provision and expectations, this is not the case for home educated children where what a suitable education is will look different for every child. How are local authority teams – especially given a widespread lack of qualifications and experience in alternative educational approaches - to evaluate a child's education? How are they to judge if perhaps a child on one particular day might be tongue-tied or shy? How on a brief meeting are the views of local authority officers to be given more weight than that of the parent or carer? This is the reality of what is mandated by this guidance and the practical implications to the lives of children are huge.

Home education is an important freedom for families. Not only as it is for some - a choice made on the basis of parental or carer philosophical beliefs about education - but also as a vital safety net for the increasing numbers of children failed by the school system.

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Governmental guidance must not – as this guidance does - undermine parental and carer responsibility for children in contravention of primary legislation and of human rights principles.

[15 names redacted]

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Submission 14 d

Issues and problems with the Welsh Government guidance on Elective Home Education in Wales For exploration at Committee.

1. "seeing" the child. 4.21. – compared to 4.37 and 4.38. and 5.3.
 - i. How is it lawful to insist that LAs "should" have a duty to "see" each child when reports by David Wolfe QC deemed this to be unlawful in multiple points?
 - b. has the Minister also sought external legal advice on whether this guidance is lawful? and if so would he disclose that in full to the Senedd so that they can undertake its role of holding Welsh Government to account?
The former Education Minister, Kirsty Williams, in her statement to the Senedd in 2019 state the reason the proposals had been passed under the previous administration was that,
*"However, because a **significant number of the many responses also raised complex technical, policy and legal matters which require careful consideration**, we need to ensure the final guidance and the draft regulations fully take these into account."*
2. 4.21 – it is surely not lawful, or moral, to infer that parents are to be considered to be deceiving the authorities unless somehow by seeing the child the LA employee feels they can be convinced that the parents are not somehow falsifying evidence.
3. 4.21, 5.3 – it is surely not lawful to have an expectation that parents should provide "evidence" for their assertion that they are providing a suitable education. Parental word should be sufficient in the absence of cause to suspect that they are lying:
 - a. In criminal law, the state has to have reasonable grounds to suspect crime to collect evidence, a person's innocence is taken as accepted unless there is sufficient reason to consider otherwise.
 - b. The guidance demonstrates a reversal of the principle of "innocent until proven guilty" as it will not accept parental word as sufficient or acceptable even in the absence of reason to believe otherwise.
 - c. The guidance is based on the assumption that LAs may consider there is no education taking place if parents do not respond. The only precedent for that is Phillip v Brown, which the guidance does not directly cite -
 - i. However cannot base secondary legislation on case law.
 - ii. That case was before both human rights laws and esp. before implementation of GDPR and Data protection act –so cannot still be used as justification/support for their stance.
4. 4.19 – It is surely not lawful for there to be an obligation for parents to provide their reasons for choosing home education.

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- a. What consequences would the Welsh Government want enforced if parents do not divulge this information?
 - b. Are parents free to withhold from expressing their reasons?
 - c. What are the consequences if parents give a "glossed over" reason rather than fully divulge their own private experiences, views and opinions?
 - d. And as an aside, cannot WG see that information obtained where parents feel under threat and coercion to have the meeting and where they are fearful of the consequences of not "pleasing" the LA officer is unlikely to be truly reflective of the parent's and family's reasons. Parents will be less likely to divulge difficulties and challenges if they perceive that they are likely to result in unwanted LA intrusion, SAOs or ESOs.
5. 4.22 – who lawfully decides when it is not in the interests of a child to be seen? How can there be an inference or a decision that it is the Local Authority who not only have the right but also have the better ability to determine this?
- a. If it is the parents who have the lawful duty to decide what is in the best interests of the child, then surely the authorities cannot deem education to be unsuitable simply on the basis of not seeing the child?
 - b. Would it be lawful if the government were to state that it was the LA not the parent who decided?
 - c. Why is it acceptable to believe parents only in some cases but not in the majority of others?
6. How appropriate is the application of
- a. The Education Act 1.5, 2.1, 2.2, 2.21-2.22, 3.2
 - i. Please note that the Education Act does NOT place a duty on authorities to ensure that every child has a suitable education, a duty the Minister has previously repeatedly claimed. It has a duty to identify those not in receipt of a suitable education, i.e. a reactive not proactive duty, a vital legal distinction.
 - ii. 3.2 appears to interpret the act that, as LAs are under a duty to identify those who are not receiving a suitable education otherwise than at a school, that therefore Local authorities are also under a duty to be proactive in looking for ways to identify ALL children who are not in school. This is not what the Act states.
 1. There also then seems to be an inappropriate or unhealthy conflation with CME by following with para 3.3.
 - b. UNCRC
 - i. 1.4, 1.6, 2.17-2.20. 4.25,
 - ii. There are no provisions made within the guidance for advocacy for children / young people and families, despite quoting Article 12 of the UNCRC as a rationale for interviewing children and young people directly and despite how families could be subject to legal actions if they do not agree with the Local Authority.
 - iii. These articles are not cited applied and interpreted correctly.

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1. The UNCRC was written in the post war era to prevent totalitarian governments from unlawfully and unethically intruding into family life or behaving in a way that was disrespectful or damaging to children.
2. The article on a children's right to an education was to stop totalitarian or unhealthy governments from PREVENTING access to education, not to make them arbitrators or overseers of it. This guidance would prevent children and families who rightly refuse unwanted interviews from being able to be home educated by threatening with legal action and school enforcement if they do not comply. Thus, the guidance is contrary to the letter and the spirit of the UNCRC on the very point it places its justification.
- iv. Note the relevance of the significant articles that are omitted eg right to privacy – please see David Wolfe's reports and the legal rebuttal of Sally Holland's review on EHE in Wales.
- v. The UNCRC states that children should have the right to be heard in state decisions that involve them.
 1. This does not give an obligation for their voices to
 - a. Be forced
 - b. Be heard in matters that the State is NOT involved in (such as education which legally is the responsibility of the parent not the state).
- vi. EHCR 2.3, 2.4. 3.8.
 1. Please see David Wolfe's reports and the legal rebuttal of Sally Holland's review on this.
 2. Guidance would seek to denying children the right to home education if families also maintain their right to privacy.
 - a.
- vii. Case laws
 1. 2.,22, 4.33 Goodred v Portsmouth 2021. Does not appear to be correctly applied here, as this is a very selective quote. That was case law, referring to a specific case, not to the right to ask every person for evidence without due need, and I believe that rulaing also deemed that the LA could not dictate how any such evidence could be given even if it were appropriate to request evidence in that particular case. That ruling deemed that considerations for requests on evidence should be on a case by case basis and not blanket rulings, but this guidance makes a blanket decision on how the vast majority of families should be coerced or pressurised into giving evidence and only in the way that fits the ministers opinion of face-to-face meetings or face SAOs.
 2. 4.4 Harrison & Harrison v Stevenson.
 - a. Quote is taken out of context of case law that actually determined that autonomous education is a suitable form of education.

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- b. It seems to be a deliberately derogatory and inflammatory selection, that contradicts the detail and the tone of previous sections.
 - c. Case law is not sufficient grounds for secondary legislation.
7. ALN section 2.12- 2.16
 - a. Would the Local Authority have the powers to instruct parents to execute and deliver the plans?
 - b. What would happen if a parent or young person was not in agreement that a IDP was useful for that child / young person?
8. 4.24 As the Welsh Government have incorporated concepts that the wishes of children have to be appropriated into judgements of suitability of education, how is the Minister going to **apply this same concept to other educational settings such as schools and EOTAS provision?**
 - a. Will each school child and child receiving EOTAS provision also be interviewed and their educational path or even the complete style of each child's education changed according to the perception of the child's preferences? Or insist on mediation or removal from that setting for school children if they are deemed to prefer not to be there?
 - b. If not, then this guidance is treating home education as a lesser option.
 - i. a school isn't going to stop teaching maths or insist child is home educated when a child doesn't like going to school
9. Off-rolling (2.30-2.35) is unlawful - i.e. even pressurising parents to consider home education is unlawful, let alone enforcing it, even when a child is not flourishing in school.
 - a. therefore, **how can it be lawful or morally acceptable to pressurise parents into school education** if a child is considered to not be flourishing in home education? or if the child is considered to not like home education? (in all the paragraphs speaking of consequences of LAs not being satisfied or not being allowed to see child).
 - b. This shows a discriminatory school-centric model bias.
 1. 4.14 is not necessarily unlawful in and of itself but displays a school-centric bias of what is considered appropriate, adding to pressure on parents to conform to it.
10. 4.21 Can parents and Gillick competent children **do two lawful things** – lawfully and “freely” decline the offer of a meeting without negative repercussions AND continue to exercise their lawful right to home educate with the parents responsible for that education?
 - a. i.e. what happen when parents or a Gillick competent child refuse a meeting? does that mean that their education cannot be deemed suitable? if so, therefore they are not "free" to both refuse and continue their lawful right to home education. what would LAs be expected to do with parents and children who refuse an interview?

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11. 4.23 When a child is considered not to be Gillick competent, then legally it is the PARENT not the state who acts on their behalf.
 - a. Therefore, does this guidance mean that, as it states a parent is free to refuse a meeting, then they can lawfully do so on behalf of a child who is not Gillick competent? **AND** retain their lawful rights to electively home educate?
 - b. what happens about the LA opinion of suitability of education then? again, if WG deems education cannot be deemed suitable without the ability to "see" and interview a child, then the parent is again not "free" act lawfully on both counts of exercising their lawful right to decline a meeting AND being free to take the lawful path of home educating their children.
12. 4.23 How is it justifiable to listen to the voice of a non-Gillick competent child on whether or not they should be home educated but not listen to their voice if they do not want an enforced interview with authorities?
13. Is it lawful and morally acceptable to expect a whole section of society having to repeatedly provide multiple pieces of evidence and their children partake in non-consensual interviews:
 - a. **To prove their innocence** and prove they are providing a suitable education **in order to identify any who are not**? Surely the principle is that Welsh citizens are innocent until proven guilty?
 - i. Multiple analogies apply here to illustrate the inappropriateness and discriminatory nature of this concept:
 1. Eg imagine forced questioning of every Muslim child in Wales to try and find any families that MAY be involved in radicalisation?
 2. Imagine forced interviews of every child who identifies as LGBTQ+ to see if any of them experience discrimination?
 - b. in order to have **state approval to exercise a lawful right**.
14. Suitable education 4.15-4.18.
 - a. By the state providing extensive definitions of what constitutes a suitable education, then is this not a powershift of responsibility? Is that lawful?
 - b. By the state defining what constitutes a suitable education, does that not therefore contradict with earlier claims to respect a range of educational approaches, as child-led autonomous education, by definition, does not follow definitions set by extrinsic adults?
 - c. Issues of when such levels would be attained. Various pedagogical approaches commonly utilised in home education do not expect skills to be acquired by the same ages mandated by school based approaches. It is not unusual for skills such as reading and writing to be allowed to emerge when the child is temperamentally and developmentally ready at very different times to those seen in

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schools. It is unclear from the guidance that this educational approach would be respected given the expectations listed.

- i. Other aspects may be contrary to a family's educational approach. For example, for some, digital literacy may be something that is incorporated at a much later age than in schools, if parents determine that a screen free childhood and development is preferable. does the proposal of such definitions of what constitutes a suitable education contradict earlier claims to respect different educational approaches and limit parental freedom to true home education, i.e. education that suits the families beliefs, philosophies and the individual needs of the child, or does it mean that what is considered permissible are simply variants of the government's perception of education?
- ii. Observation of rather dated models of education, with SPAG-centric focus.

15. 4.26 and 4.28 – samples of work.

- a. Is a child obliged to share their “work” or samples of their creative processes with others? Is it not their property?
- b. What happens when a child uses their “voice” to refuse to share?
- c. Do LAs have the lawful right to insist on seeing samples of “work”?
- d. Observation - Home educating families are not obliged to do “work” if do not follow a school-like approach to education, as indicated earlier, thus again showing school-based bias and perceptions of education in the guidance.

16. 4.28 – how lawful is it that parents “views and opinions” are only given “sufficient weight” in the LA determining suitability, rather than being the driving force or the actual ones determining it?

17. 4.27 – what would the consequences be for parents choosing to not complete questionnaires, especially if they feel they are biased, overstepping or school-focused in style of understanding of education (as incidentally often currently happens with voluntary questionnaires that can give the impression of being a requirement to complete).

18. 4.30 – are LAs entitled to future plans? Are parents under any lawful duty to provide these? When an education is truly child focused then any plans made by a parent can and should change over time in adjustment to what is observed to be most suitable for the child. Likewise, child focused education typically has little if few “plans” in the concept of school-like planning. Some home education approaches have the very valid aims and pedagogy of encouraging independence of thought and self-directed learning.

19. 4.34 4.35 – How can it appropriate that it is the LA not the parent that determines frequency of meetings/assessments?

20. 4.36- who determines if parents need “support” – parents or LA? If it is LAs, then how does the statement of parents not being under obligation to

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accept "support" correlate with potential of imposition of SAOs/ESOs if they don't?

21. 5.14 5.15 5.16 Lack of complaints process, lack of accountability of LA officers. Courts being adjudicators. Financial cost implications to parents.
 - a. Only those parents who can afford the risk of meeting court costs would be able to contest decisions that they feel are unfair, unjust or discriminatory.
22. How the guidance compares to precedents such as
 - a. Isle of Mann
 - i. <https://he-byte.uk/iom/isle-of-man-education-bill-abandoned/>
 - b. Named person scheme
 - i. <https://he-byte.uk/scotland/named-person-scheme-pronounced-dead-but-its-spectre-lives-on/>

Section 7 - safeguarding.

So many issues of conflation of safeguarding and education that it is hard to know where to begin!

refusing unlawful interviews is not a safeguarding concern.

To use threats of social services to intimidate parents into compliance is hardly building a "positive relationship" and surely must be a very dubious move in terms of lawfulness, ethics and an appropriate use of scarce and much needed resources, a move that would deprive children who genuinely need the help of social services from the time and attention that they so greatly need.

Data sharing issues:

1. 3.9. is it lawfully essential that LAs know of every child?
2. 3.7 – are routine ISPs for LAs to share data about children in other LAs lawful if the child is NOT deemed at specific risk? That is, how can it possibly be proportional and lawful to share data between LAs in the absence of specific risk and purely because they exercise the lawful choice of electing to home educate?
3. 3.11 – is it lawful for police and "professionals" to share data about children with other agencies purely because they are home educated and in the absence of any specific risk of harm?
4. 3.11 Is the wording on "*professionals*" too loose here? Does that mean that it is acceptable for doctors, dentists etc to inform the LA that a child is home educating in the absence of any specific concerns of risk but purely because they are home educating?
5. Are children and parents obliged to give their personal information of name and addresses to police if there is no suspicion of a crime and if they do not consent to data sharing between public authorities?

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6. 3.13 is it lawful for LAs to “**have data sharing agreements to facilitate cross checking of children entering statutory provision against partner databases (such as early years, childcare teams and health)**” and to do so routinely for all children rather than in specific cases if there were evidence of concerns about individual children? Please note that they intend to cross reference HEALTH databases with educational ones without consent. This would be a deterrent from those who wish to avoid coerced, mandatory and likely unlawful meetings with LAs from placing themselves and their children onto health databases and thus accessing health care.
 - i. This results in, for just one of many example, school nurse programmes to offer vaccinations or other health checks being seen as something to avoid because they would result in identification of children to the LA and thus to unwanted and damaging interviews. This is hardly encouraging a positive relationship. This also removes a natural form of safeguarding by deterring families from accessing health care where, if there were any issues of concern on child welfare, these would be more readily and naturally noted than the artificial and coerced meetings proposed in the guidance. Making accessing health care a route to enforcing unwanted interviews is counterproductive as a wellbeing or a safeguarding measure. in addition, medical confidentiality applies not only to what happens within a consulting room but ethically the accessing of health care itself is a confidential matter, with confidentiality only to be breached if there were overriding concerns in specific and individual cases.
7. 3.14 and 3.15 – these points conflate the concepts of CME with an EHE child where the LA know that the child is EHE not CME but then may not know the location of that child if they move homes. How can data-sharing be acceptable and lawful if the EHE child who has moved home is not deemed a child at risk? If a child is not CME in one area because they are in receipt of a suitable education via elective home education, then that education has not automatically changed simply because they live in a different house, thus by definition they are not CME – they are not automatically missing education.
8. Also seen in 4.12 –
A child is CME unless satisfied otherwise. That cannot be lawful, especially when they take “satisfied” not just to mean that parents have confirmed that the children are not CME and are indeed being home educated, but where the guidance seeks to interpret it as LAs being satisfied via interviews of suitability of education, of socialisation and of their perception of the child's views.
9. 3.16-3.19 – how can these measures be lawful and is it lawful for LAs to use them routinely to identify any children who are home educated in the absence of risks about individual children?
10. 4.19-4.30 –
 - a. Is it lawful for the LA to request such large volumes of data and information from families in the absence of specific risk or concern in each case? Please note they would routinely request information from

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every child and parent (not only where there is specific consideration of risk) on

- i. Education
 - ii. Socialisation and social opportunities
 - iii. The child's beliefs and opinions about their family life in terms of their choice of educational approaches.
 - iv. But would not do so for school-educated children or for EOTAS children.
 - b. It is lawful for LAs to do so when the families are providing this information not "freely" but under coercion of threats of legal proceedings such as school attendance orders and social services involvement if they do not agree to meetings and to providing whatever information the LA request?
 - c. 4.28- 4.29. Whose property is whatever is done by the child in the course of their learning? (Sometimes termed "work" in the guidance, although many forms of home education do not involve "work" in terms of replicating school-like "work" as is alluded to earlier in the guidance).
 - i. Should a child of the age of consent be forced or coerced into sharing information about or examples of their learning or "work".
 - ii. Should a child who is not able to give consent due to age or ALNs be forced or coerced into sharing information about or examples of their learning or "work"?
 - iii. Should a parent be forced or coerced into sharing examples of learning or "work" that their child has done?
11. 4.39-4.41 – lack of protective measures.
 - a. In terms of what this written report contains – lack of an independent body to assess any disputes about the relevance, validity and accuracy of the content.
 - b. Who this report can be shared with and how it can be used?
 - i. especially how can the information in such a report be used when the parents and children would not have consented to provide the information but for coercive effect of threats of legal action such as SAOs and social services involvement
 - ii. and/or if the LA plan to use the report without consent of the family?
12. (side point 6.9-6.12 – is there any need for clarity that data should not be shared with these bodies without consent?)
13. 7.21 "Data protection legislation allows for the sharing of information and should not be automatically used as a reason for not doing so. One of the specific circumstances which provides for information sharing is to prevent abuse or serious harm to others. When information is not shared in a timely and effective way, decisions made may be ill informed and lead to poor safeguarding practice and leave children at risk of harm."
 - a. What data legislation are they referring to? This phrasing would appear likely to lead LA employees to disregard laws and rules on data sharing and privacy. Does this phrasing mean that data sharing without consent is to be used as a general principle rather than an

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- exception in individual cases where there is a justifiable and demonstrable reason to do so?
- b. Is there evidence of clarity of what is meant by "serious harm" either in this guidance or in an appropriately rigorous training programme for LA employees utilising this guidance?
 - c. Should the public have sight of all training and procedures for when data sharing is and is not considered appropriate? Should that information be clarified by Welsh Government in their guidance or left to individual LAs? If the latter, who is accountable to ensuring all are compliant with the law?
1. Own personal points rather than direct legal ones - Unlike the education that it is meant to uphold, the guidance itself is neither "suitable" or "efficient".
- a. 4.26 If the aim is for positive engagement, protection of children's rights, enhancement of natural safeguarding and genuine support for home education, then it would not only fail to achieve these but be counterproductive.
 - b. how would seeing a child do anything more than provide false reassurance regarding safeguarding? -
 - c. how will this increase positive engagement when it is done out of coercion and against the wishes of individuals and the community?
 - d. How this will deter families from asking for help knowing the duty the LA is under to pressurise towards school and when interviews are effectively mandatory under threat of SAO and SS involvement?
 - e. If the aim of these proposals is positive engagement and safeguarding (or however we want to summarise their aims), then the proposals will not achieve their aims, and unlike the education of home educated children, the proposals are neither "suitable" or "efficient".
 - f. It quenches the education and true voices of children by coercing them.

Submission 15 a

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Whilst I am pleased to note that WG have recognised in paragraph 1.12 the alternative approach home educators take to that of a state education and in paragraph 4.20 that any enquiry the Local Authority conduct should be sensitive to the family circumstances, the guidance has limited understanding of home education. The document contains many contradictions, and questionable requirements for Local Authorities making it an unworkable, counterproductive document for both Local Authorities and home educators.

Local Authorities and home educators would like to have a mutually respectful co-operative relationship. The underlying tone and content of this document, in its current form, does not aid in that relationship. I, and hundreds of other home educating families, are very concerned about the content of the guidance. In particular the requirement in paragraph 4.28 and also paragraph 4.21 which is particularly conflicting.

I would like to submit the following questions. I must be honest and say I am unsure of the full capacity of the committee and so if there is anything that does not fall within their remit, perhaps the committee could advise of the appropriate person to contact.

Can the Committee please confirm whether the Education Minister should have informed the home education community - who are key stakeholders in the guidance, that work on the guidance had recommenced in September 2021 as I am unable to find any evidence of this.

The previous Education Minister officially announced a pause in work (22.06.2020) and also announced after the consultation in 2019:

"We will continue to work closely with all stakeholders and delivery partners to ensure we have statutory guidance and regulations that are fit for purpose, reasonable and proportionate. **In addition, prior to final publication of the guidance and coming into force for the regulations, they will be subject to robust processes and scrutiny, such as a data protection impact assessment, integrated impact assessment and a regulatory impact assessment, to ensure both are lawful.**"

11/12/2019 [Written Statement: Children Act 2004 Education Database \(Wales\) Regulations 2020 and the Education \(Information about Children in Independent Schools\) \(Wales\) Regulations 2020 | GOV.WALES](#)

I cannot find any evidence of any assessment of the published guidance.

I have read the published summary of responses to the 2019 guidance consultation and Kirsty Williams response stating that there were many legal and practical issues raised that needed consideration, but I cannot find any official statement or analysis stating how the consultation has helped to inform the guidance from the current Education Minister other than answers to written or oral questions that give a vague reference to responses being considered.

I would also like to know if an updated Children's Rights Impact Assessment should have been completed and published before the release of guidance? I

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understand that all articles of the UNCRC should be considered as a whole but the CRIA published in 2018 does not appear to consider all relevant articles.

Welsh Government keep referring to hearing a child's voice. I would like to know if it is obligatory that the child should have their voice heard and if it can only be heard by the state as is being implied? The guidance implies that hearing the child's voice is a part of deciding if education is suitable.

I would like to know the committee's position on the wording within guidance. It is most confusing that during his statement yesterday (06.06.2023) the Education Minister stated meetings with local authorities are not mandatory and yet the guidance states the local authority should see the child and if they do not it will be difficult to decide on suitability. Further in the guidance it states that if the local authority are unsure of suitability because they have not seen the child, they should issue a notice to satisfy which then gives a family no option than to meet with the local authority - therefore making it indirectly mandatory.

Lastly can the committee look at who is legally responsible for the suitability of education. 436a of the education act states the Local Authority are to identify children who are not receiving a suitable education, it does not say, as the Education Minister keeps implying, that they have a duty to ensure a child is receiving a suitable education or that an LA employee can be the sole judge of that suitability. The guidance appears to go much further from the outset than the Law allows.

I feel we are being unfairly treated. If a child in school voices their dislike of a subject, their education is not deemed unsuitable. If a child walks into a school building every day, that does not necessarily mean they are receiving a suitable education. There are so many conflicting statements within the new guidance and despite the Education Minister's statement yesterday, there is no 'campaign group', we are all concerned individuals.

The Education Department's civil servants are unable to tell us which sections of the guidance are statutory and which are non statutory, despite drafting the guidance.

The Children's Commissioner has voiced she was 'disappointed [with the lack of] an evaluation plan to be published alongside any new guidance' (The Children's Commissioner for Wales, 16th May 2023)

Whilst we as parents and carers do not have appropriate legal knowledge on what is considered lawful. The guidance appears rushed with many errors that are most questionable in this regard and so we ask that the committee launch an urgent enquiry into the home education statutory guidance that has been published, in order for the document to be thoroughly scrutinised to ensure it has been appropriately assessed and due process has been followed. The Minister spoke yesterday of local authorities and home educators having a positive relationship, I hope guidance can be altered to achieve this.

Kind Regards

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Submission 15 b

Good Evening

Many thanks for submitting my email for the papers to note. I have this evening, found a very important UNCRC document that clarifies the right of the child to have their voice heard, is a right and not an obligation.

General Comment No. 12 (2009) The right of the child to be heard.

16. The child, however, has the right not to exercise this right. Expressing views is a choice for the child, not an obligation. States parties have to ensure that the child receives all necessary information and advice to make a decision in favour of her or his best interests.

https://resourcecentre.savethechildren.net/document/general-comment-no-12-2009-right-child-be-heard/?fbclid=IwAR3_5jpkjuo1UvVyS09oqwQfsqAohYV4FpSCYP46k5xFJuWHPRDV3CyAilo

Many thanks

Submission 16

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Hello,

Please look into the lawfulness of the new statutory guidance on home education in Wales. I believe parts of it are unlawful as per the comments from David Wolfe QC. The guidance is also unethical and discriminatory towards families who have chosen to home educate. It assumes a guilt on our family's part until proven otherwise. Local authorities ALREADY had the power to act on suspicions of an unsuitable education and could invoke School Attendance Orders. The new guidance is too heavy handed, overreaching in to family life. It will no doubt stir up division and distrust between LAs and home ed families, and likely damage current positive relationships between LAs and families.

Please review this new guidance in your committee and challenge it in the Senedd.

Kind regards,

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Submission 17

To those at the LJC Committee,

I am writing to you as a home-educating parent, in relation to the recent Elective Home Education Guidance that has just been published (288/2023).

I believe you are considering whether to look into the guidance further. As such I would like to share my main concern in regards to the guidance.

I understand the need to ensure home-educated children are receiving a suitable, full-time education.

However, I have a concern about the ability for parents to appeal, if they believe their local authority has made an unfair assessment that the education they are providing is not suitable.

From what I can see in the Guidance, it appears the only opportunity for a parent to have the decision independently reviewed is if they refuse a School Attendance Order and are then prosecuted by the local authority. Only then will a court decide if the education provided by the parent is suitable and full-time. (See section 5.14 of the Guidance)

This process would place a huge amount of stress and pressure on a family.

The only other recourse would, presumably, be a judicial review, which would be prohibitively expensive for most home-educators, who usually choose to take a cut in their earning potential to provide and fund their children's education.

Would it be possible to have an independent panel that a family could appeal to, if they disagreed with a local authority's decision, before the matter is escalated to court proceedings? For example, like the educational appeal panels, that hear appeals about admission and exclusion decisions that schools have made.

This is no reflection on my local authority officers, who have been supportive and helpful. However, we cannot assume all local authorities will always execute their responsibilities fairly and without bias or error.

What redress would there be for families who might have been wrongly found to not be providing a suitable education for their children? I believe this needs to be given sufficient consideration, especially as home-education can be such a sensitive, and polarising subject, with many people not really understanding the motivations of parents who choose it for their children and/or the benefits to children themselves.

I appreciate your time considering these important matters.

Kind regards,

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Submission 18

To whom it may concern,

The Minister of Education has released new Statutory Guidance for Home Education (12th May 2023).

Whilst the guidance has some limited understanding of home education. The document contains many contradictions, and questionable requirements for Local Authorities making it an unworkable, counterproductive document for both Local Authorities and home educators.

Local Authorities and home educators would like to have a mutually respectful co-operative relationship. The underlying tone and content of this document, in its current form, does not aid in that relationship.

The community has previously funded legal opinion and a rebuttal, which we ask you to consider. This has previously been sent to the committee and can be viewed again here <https://business.senedd.wales/documents/s134220/LJC6-07-23%20-%20Paper%2018%20-%20Letter%20from%20Families%20First%20in%20Education%20Wales%2021%20February%202023.pdf>

The Education Department's civil servants are unable to tell us which sections of the guidance are statutory and which are non statutory, despite drafting the guidance.

The Children's Commissioner has voiced she was 'disappointed [with the lack of] an evaluation plan to be published alongside any new guidance' (The Children's Commissioner for Wales, 16th May 2023)

Whilst we as parents and carers do not have appropriate legal knowledge on what is considered lawful. The guidance appears to have been rushed with many errors that are most questionable in this regard and so we ask that the committee launch an urgent enquiry into the home education statutory guidance that has been published, in order for the document to be thoroughly scrutinised to ensure it has been appropriately assessed and due process has been followed.

I would be most grateful if you could launch an urgent investigation into the newly published guidance as there are many concerns regarding the guidance including how this is going to affect HE Children's mental health.

Kind regards

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Submission 19

To Whom it May Concern,

As a mother who is currently in the process of considering home education due to the corruption of the education system that infringes on our rights, values and religion; I am extremely concerned about the legislation in which the Welsh government wish to enforce upon parents. A parent should be able to teach their children freely as part of a democratic society. Of course children should be taught core subjects such as maths, English and science. But letting children choose different things to learn such as different languages and different skills that they would not learn in a school environment is amazing. The Welsh government should be working with parents not against them by enforcing mandatory checks for children. Which is basically what it is as if you do not comply the government they will hold that against you. They have not considered that most children do not like to speak to strangers and that this could cause unnecessary distress for said child/ren. Children should not be made to go on a register as if they are criminals and parents should not have to have a DBS check in order to educate their own children. We love them, we protect, nurture and guide them and yet we are not good enough to educate them?

Please can you look further into this guidance to put all those home educating parents' minds at ease.

Yours Sincerely

Agenda Item 10

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

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