

Elective Home Education

Y Pwyllgor Deisebau | 3 Rhagfyr 2019
Petitions Committee | 3 December 2019

Reference: RS19/11038

Petition Number: P-05-922 and P-05-923

Petition title: Withdraw the proposed home education guidance

Text of petition: We call upon the National Assembly for Wales to urge the Welsh Government to withdraw the proposed guidance for home education.

Additional Information: The Welsh Assembly Government has issued prospective guidance for home education. This mandates that home educating parents must meet with their local authority and allow their children to be interviewed by the local authority. We have received specialist legal advice which claims that the guidance is unlawful and petitioners ask that the guidance be withdrawn to be reconsidered in light of that advice.

Petition title: Are you listening to us? Home Education Rights and Respect!

Text of petition: The draft statutory guidance on home education is not fit for purpose. It sets to continue the hostilities between local authorities & home educators both through the language used in the document & the aims it sets to empower LAs to achieve.

There is a failure to provide any credible support to home educators. There is a failure to protect, respect & value home educators. This document does not recognise or support them in any credible or effective means. We ask the National Assembly to investigate the role and pressure the Welsh Government have been put under from the children's commissioner's office with regards to home education & the extent this has shaped this guidance against the input from stakeholders in the home education community. We ask the assembly to investigate the level of engagement the children's commissioner has with home



educated children & why from what engagement she has had, she has failed to listen to their views about home education & is still continuing her campaign against home educators.

We ask the assembly to investigate why there are no safeguards throughout this guidance to protect home educators & hold LAs to account in their conduct with home educators? We ask the assembly to investigate why there is no mention or recommending of signposting to the Welsh home education charities in the guidance despite these being best placed for support & advocacy for Welsh home educators. We ask the assembly to investigate the feedback Welsh Government has received from primary stakeholders & if Welsh Government has fairly represented their views & needs to the same extent as the Children's Commissioner and LAs objectives.

1. Background

Parents may elect to educate their children at home for many reasons. These may be ideological or philosophical views which favour home education, or wishing to provide education which has a different basis to that normally found in schools. Parents may also be dissatisfied with the school system, or the school at which a place is available. Other reasons may include bullying of the child at school, health reasons, particularly mental health of the child, a child's unwillingness or inability to go to school, including school phobia or special educational needs, or a perceived lack of suitable provision in the school system for those needs.

The [Welsh Government publishes data](#) on the number of children who are known to be electively educated at home. In the 2018/19 academic year **2,517 children were known to be electively home educated in Wales**. The rate of elective home educated pupils increased in 2018/19 **to 6.6 out of 1,000**, from 5.5 out of 1,000 in 2017/18. As parents notify their local authority that they are home educating their children on a voluntary basis (unless they have withdrawn their child from school), these data may not include all electively home educated children.

1.1. Legal background

Parents may educate their children at home providing they fulfil the requirements of section 7 of the Education Act 1996:

7. Duty of parents to secure education of children of compulsory school age.

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

(a) to his age, ability and aptitude, and

(b) to any special educational needs he may have,
either by regular attendance at school or otherwise.

There is no current duty for local authorities to monitor the progress of home-educated children. However, under section 436A of the Education Act 1996, **local authorities have a duty to make arrangements to identify children not receiving a suitable education:**

436A Duty to make arrangements to identify children not receiving education

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

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

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

2. Welsh Government action

Between September and November 2012, the Welsh Government consulted on proposals to legislate to introduce a compulsory registration and monitoring scheme for elective home educated children. Huw Lewis, then Cabinet Secretary for Education and Skills, explained in a [statement on 6 May 2014](#) that he had decided not to introduce legislation, but the Welsh Government would issue non-statutory guidance.

Following a [consultation](#) in May 2015, [Elective home education, Non-statutory guidance for local authorities](#) was published in January 2017. The guidance seeks to clarify the rights of home-educating parents/carers and the responsibilities of local authorities and provide guidance to local authorities on developing and maintaining relationships with families who home-educate their children. Kirsty Williams, the Cabinet Secretary for Education said in a [statement on 9 January 2017](#), accompanying the publication of the guidance, that whilst the guidance sought to strike an appropriate balance:

I believe we need to adopt a more robust approach to education provision for all children, regardless of where that education is provided. This guidance will form part of a package of measures I'm considering to support local authorities, the home educating community and alternative providers, including the potential for introducing legislation.

On 29 July 2019, the Welsh Government published a consultation on [draft statutory guidance for local authorities on home education along with a handbook for home educators](#). The consultation states local authorities have called for 'more robust guidance' than the 2017 non-statutory guidance in terms of identifying children and young people not receiving a suitable education, and on assessing the suitability of home education. There will be separate consultations on regulations to require:

- Local authorities to establish and maintain a database to assist them in identifying children not on any maintained schools roll, not on any education other than at school (EOTAS) roll, or independent school roll, and not receiving a suitable education.

- Local health boards to disclose to local authorities specified, limited, non-clinical information about a child who is ordinarily resident in that local authority's area.
- Independent schools to share data on the pupils registered with them with the local authority.

There are some differences between the 2017 non-statutory guidance and the draft statutory guidance published this year. In relation to local authorities meeting and interviewing home educated children, the 2017 guidance states:

Meeting EHE [elective home education] families

It is recommended that an initial meeting takes place with EHE families to discuss their provision and any advice and ongoing support they may need. Contact with the family should normally be made in writing and should seek a meeting or request a written update. Meetings should take place at mutually agreed locations. Thereafter it is recommended that the LA [local authority] seeks to make contact with home-educating families at least once a year. Where parents elect not to meet LA officers in their home, alternative arrangements should be sought.

The draft statutory guidance states:

In order for a local authority to satisfy itself of the suitability of education provided by the parents, the local authority **should** see and speak with the child. In the absence of seeing the child, it will be questionable whether the local authority can reasonably assess suitability of education and to know if other evidence provided relates to that child. Communicating with the child will provide an opportunity for the local authority to better understand how the child learns and what areas of learning they are interested in. [emphasis as set out in the guidance]

It also states:

The frequency of meetings with home educating families should be undertaken proportionately and based on the individual circumstances of each child. A meeting should take place at least once a year to ensure the suitability of education is maintained and that the child is considered to be making suitable progress.

The revised guidance explains that, in this context, 'should' means:

Local authorities must have regard to this statutory guidance and carefully consider it. Having done so, there would need to be a good reason to justify not complying with it. For example, avoidance or refusal by the family would not constitute good reason.

The draft statutory guidance states that in reviewing their procedures and practices, it would be good practice for local authorities to involve home education organisations and home educators. It also states that local authorities should provide clear and accurate written information on their home education policies on their website on a page specifically for home education, including contact details for home education support organisations where available. The draft handbook for home educators includes the details of some organisations that exists to support home educators, for example, [Ed Yourself](#) and [Education Otherwise](#).

2.1. Children's Commissioner for Wales

In her previous three annual reports, the Children's Commissioner for Wales has called on the Welsh Government to make significant policy changes to ensure that children educated at home are not invisible and that they receive all of their human rights. This includes their right to education, their right to participate in decisions about their lives and their right to be safe.

At the time of the Children's Commissioner's **2018-19 annual report** (published in October 2019), she recommended that the Welsh Government publish their updated policy with the aims of meeting the following three tests in full:

- That all children in Wales can be accounted for and that none slip under the radar of universal services and society in general;
- That every child receives a suitable education and their other human rights including health, care and safety;
- That this cannot be achieved without enabling every child the opportunity to be seen and their views, including their views about their education, and experiences listened to.

In her 2018-19 annual report, the Children's Commissioner states that regarding concerns over a lack of pace and progress, she has made the Welsh Government aware that she was considering using her legal powers to review the development of this policy area, retaining the option to review at any point should she have concerns that Government are not exercising their functions to ensure appropriate policy aims will be met.

The **Children, Young People and Education Committee** took evidence from the Children's Commissioner on her Annual Report on 6 November 2019. In her evidence, she said:

- There has been a big shift towards meeting her three tests;
- From the draft statutory guidance, there is a clearer idea of how children would be seen and what would happen if they were not seen;
- There are areas in the guidance where there are loopholes which she would like to see tightened;
- In terms of knowing where children are, there have been policy statements about the Government's intentions.

When asked about the suggestion that the draft guidance is unlawful, the Children's Commissioner said:

Obviously, the Government will have had their own legal advice before they put out their draft guidance, and I'm sure they'll be working on a response to that. The key issue, and the key discussions I've had with the Minister, when I've had the chance to discuss this with her, has been how much they can do under secondary legislation—which is what they're attempting to do this under, which was an attempt to do it quickly. It hasn't actually been very quick, but it was an attempt to do this more quickly and proportionately—and what would need primary legislation. So, my understanding is that they've worked hard to make sure that the guidance uses the full extent of what can be done through secondary legislation, but, clearly, there are different legal interpretations and I'm sure there are going to be robust legal discussions about that.

She went on to say:

There's been talk about this going forward for a number of years since the child practice review recommendations on the death of Dylan Seabridge. It's very complex; I'm not at all suggesting to the Government it's easy. It's a very complex area to work in, as we all know. It's a highly emotive area. People feel very personally pro or against it, a bit like many other areas that this committee considers. So, it is very complex. It's been a very difficult area, I think, for the Government to work up their guidance on. However, it's a shame that it still remains so controversial and so opposed by sections of the home educating community, who I don't think speak for everyone who's home educating.

The **Committee has written to the Minister for Education (19 November 2019)** seeking clarification on the legal issues with regard to the guidance.

3. National Assembly for Wales action

3.1. Petitions Committee

There have been three petitions on the subject of home education prior to the two being considered at this meeting. One on the subject of the non-statutory guidance that was issued for consultation in May 2015 and two in relation to the 2012 consultation on registration and monitoring of home education:

- **P-04-646: Petition against Welsh Draft Non-statutory Guidance for Local Authorities on Elective Home Education** was considered by the Petitions Committee in 2015. The then Minister for Education and Skills addressed the petitioner's concerns and agreed to ensure that their views would be taken into account in developing the new guidance. The petition was therefore closed.
- **P-04-517: Stop the Welsh Assembly Government from bringing in the monitoring of electively home educated children under the guise of safeguarding** was considered between November 2013 and June 2014; and

- **P-04-437: Opposing compulsory registration for home educating children**
was considered by the Petitions Committee between November 2012 and June 2014. The petition's originator has submitted one of the petitions currently under consideration by the Committee (P-05-922, Withdraw the proposed home education guidance).

Huw Lewis, Minister for Education at the time announced in May 2014 that, following consultation, he had decided not to legislate for a compulsory registration and monitoring scheme during the current Assembly term. Both petitions (P-04-517 and P04-437) were therefore closed.

3.2. Children, Young People and Education Committee

The Children, Young People and Education Committee has maintained an interest in elective home education and has corresponded with the Minister for Education and the Children's Commissioner for Wales and others:

- 28 February 2018: **Letters between the Minister for Education and the Children's Commissioner for Wales about planned statutory guidance and database**
- 22 November 2018: **Letter from the Children's Commissioner for Wales to the First Minister**
- 28 November 2018: **Letter from the Cabinet Secretary for Education to the Children's Commissioner for Wales**
- 10 January 2019: **Letter from the Children's Commissioner for Wales**
- 30 January 2019: **Letter from the Children's Commissioner for Wales**
- 18 July 2019: **Letter from the Children Commissioner for Wales** and **Letter from the Minister for Education**
- 14 November 2019: **Letter from Protecting Home Education Wales regarding the draft statutory guidance for local authorities on home education** and **Email the Trustee and Welsh Liaison for Education Otherwise regarding the draft statutory guidance for local authorities from on home education**

- 19 November 2019: The **Committee has written to the Minister for Education (19 November 2019)** seeking clarification on the legal issues with regard to the guidance.

4. Position in England

Following an earlier call for evidence, on 2 April 2019 the UK Government's Department for Education published a consultation on proposed legislation concerning children not in school. The consultation closed on 24 June 2019.

The consultation sought views on proposals to create four new duties:

- A duty on local authorities to maintain a register of children of compulsory school age who are not registered at a state-funded or registered independent school.
- A duty on parents to provide information to their local authority if their child is within scope of the register.
- A duty on education settings attended by children on the register to respond to enquiries from local authorities about the education provided to individual children.
- A duty on local authorities to provide support to home educated families if requested by such families.

The UK Government has not yet published its response to the consultation.

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.