

Legal aspects of home education in England & Wales

Education is compulsory – school attendance is not

For England and Wales, the parent's duties with respect to education are set out in the Education Act 1996. Section 7 of the Act reads:

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.

We cannot expect a single system of education to cater for the needs and interests of all individuals. Rather, it is important that a variety of alternatives should be available. The law allows for such diversity. It says parents must see that their children are properly educated, but it leaves them the choice of how to do it. They may send them to school, or they may make other arrangements. Home-based provision is just as valid as school education. Education is compulsory, but school attendance is not.

Deregistration

Parents do not need to obtain permission or approval from anyone in order to home educate, nor do they even have to tell the local education authority (LEA); but if they are removing a child from school, they do have to write to the school.

Children who go to school have their names entered in the *school admission register*. If they are of 'compulsory school age' they must attend school regularly, otherwise their parents are committing an offence (1996 Act, s 444). Where the parents connive at non-attendance, the offence is more serious. The extra duty to secure regular attendance applies only with respect to *registered pupils*, so it is important to see that children are *deregistered* when taking them out of school.

For England and Wales, the grounds for deregistration are set out in the Education (Pupil Registration) Regulations 1995. Under Regulation 9(1)(c), a 'school-age' pupil's name is to be deleted from the register if

he has ceased to attend the school and the proprietor has received written notification from the parent that the pupil is receiving education otherwise than at school.

So to be sure of deregistration the parent should write to the school asking for the name to be taken off the admission register and stating that the child *is receiving* education otherwise than at school. The school must then take the child's name off the register and pass it to the LEA (Regulation 13(3)). Once the name is off the register there can be no question of subsequent truancy, and it is for the LEA, not the school, to make any further enquiries about the family's arrangements.

Duty of the local education authority

Under section 437 of the 1996 Act the LEA must intervene if it appears to them that a school-age child is not receiving suitable education. To allow them to carry out their duty effectively, case law has established that they are entitled to ask parents informally for information (Phillips v Brown, 20 June 1980). Exactly how the parents provide such information is a matter for negotiation; but if they fail to respond at all, the LEA can reasonably conclude that proper

education seems not to be taking place. The LEA are then required to embark on the school attendance order procedure (see below).

In practice LEAs vary considerably in both the extent to which they check up on home-educating families and the means by which they do so. Often parents may be happy to comply with any specific proposal or request made by the LEA. However, such proposals or requests do not in themselves have the force of law, and where parents feel unable to comply, their best course may be to explain why and to propose a constructive alternative.

The parents' task is simply to make sure that it does not appear to the LEA that the child is not receiving suitable education. To do this they will need to provide information of one kind or another. The range of possibilities could include:

- written reports
- samples of work
- home visits, with or without the child
- meetings held elsewhere, with or without the child
- endorsement by a recognised third party

Suitable education

The 1996 Act makes no attempt to define 'suitable education', and disputes over educational provision rarely come to court, so there is little case law to help with this. However, in the case of *Harrison & Harrison v Stevenson* (appeal to Worcester Crown Court 1981), education was held to be 'suitable' if it was such as

1. to prepare children for life in modern civilised society; and
2. to allow them to achieve their full potential.

This definition is a very general one and can encompass a variety of educational styles and methods. Families are entitled to choose whatever they feel to be the most suitable approach to learning at home for their child. The only real limitations are that home education should not be seen as a means of separating children from society at large, and that children should be offered a reasonably wide range of appropriate opportunities.

This need not prevent parents from educating their children primarily for life within a particular community where the values and beliefs of that community differ from those of society as a whole. In *R v Secretary of State for Education and Science ex parte Talmud Torah Machzikei Hadass School Trust* (1985), it was held that such education was 'suitable' as long as it did not deny the child the possibility of later adopting some other lifestyle.

As for allowing children to achieve their potential, there are many ways of doing this, and some of them may be mutually exclusive. Sometimes children may be well-equipped for life despite receiving less education than usual, or perhaps none at all, in a specific field. Critics sometimes claim that children are denied opportunities by being kept away from school; but many parents choose to educate their children at home precisely because they feel they are giving them more freedom, not less, to become everything they are capable of becoming.

Styles of education

Some families approach home education in a conventional 'teacher and pupil' way, with 'subjects', 'lessons' and timetables. Others favour an 'autonomous', self-directed style, where children learn through pursuing their own interests and the parent's role is largely to see that suitable resources are available. Many aim to be flexible, perhaps adopting a combination of these styles, or tailoring their approach to the personalities of individual children in the family. Often families may change their educational style over time as the child's needs change. Typically they may start out with a formal, 'transmissive' approach, but develop a more autonomous style as they become more relaxed and confident.

Provided the child is receiving education that can reasonably be described as 'suitable', all approaches are equally valid. Families may choose to adopt school hours, lessons and timetables, but they need not do so. Nor are they required to hold any specific qualifications or to have any specific equipment. Education can take place anywhere and at any time, and can take a variety of different forms.

National Curriculum

Home education does not have to cover the same syllabus as the equivalent education being offered in school, nor does it have to meet any hypothetical standard set by any school or the LEA (*Bevan v Shears*, 1911, 2KB 936). Specifically, it is clear from sections 351-353 of the Education Act 1996 that the National Curriculum applies only to children who are registered pupils of maintained (i.e. state or state-supported) schools. Therefore home educators may choose whether to adopt it fully, partially or not at all. Any LEA officer who insists that they must follow it is mistaken. Indeed, forcing families to model their educational arrangements too closely on schools could have a detrimental effect on some children, especially those who developed a fear of learning whilst in school.

'Compulsory school age'

Compulsory school age is a shorthand expression, and should not of course be taken to imply that school itself is compulsory. It simply means the age at which *education* is compulsory.

In England and Wales, compulsory education begins on whichever of three fixed dates falls on, or next after, a child's fifth birthday (1996 Act, s 8(2)). These dates are March 31, August 31 and December 31 (Education (Start of Compulsory School Age) Order 1998). But schools are not obliged to admit children part-way through a term (unless they have been ill or have just moved into the area); and parents need not provide education for their children when for this reason it is not practicable to have them admitted to a school (s 433).

Compulsory education ends on the last Friday in June of the 'school year' in which the child's sixteenth birthday falls (s 8(3), and Education (School Leaving Date) Order 1997). A school year is considered to begin on the first day of the autumn term (s 579(1)).

Full-time

There is no agreed definition of the term *full-time*. The hours spent on teaching in schools are not necessarily relevant to home education, which generally takes place on a one-to-one basis in very different conditions. Moreover, the term

education is ambiguous in this context. It could mean *learning*, *studying* or *teaching*. Some home educators argue that education takes place throughout their children's waking hours, and that any discussion of the meaning of 'full-time' is therefore superfluous.

In the absence of a definition there is no legal basis on which LEAs may demand any specific number of hours of home education per week. Nevertheless parents do have a duty to provide education which could reasonably be seen as 'full-time'.

Part-time school attendance

Many families would welcome the opportunity to use schools for selected subjects or activities. Legally, this presents a problem. Anyone who is a pupil at a school has to be on the register (1996 Act, s 434), and anyone on the register must attend 'regularly' (i.e. full-time) (s 444).

The solution to this dilemma lies in s 444(3): 'the child shall not be taken to have failed to attend regularly at the school by reason of his absence from the school with leave'. In effect, part-time schooling (or 'flexischooling') is possible, but only if those periods during school hours where the child is not at school are treated as authorised absences. During such absences the child is officially at school, but is effectively being 'educated off site'.

Where part-time attendance has been successful it has generally involved a carefully drafted agreement with the school. Such an agreement can be made only at the discretion of the school head. The part-time arrangements need to be compatible with the National Curriculum, and the home education component is, in theory at least, subject to the approval of the school.

Special educational needs

If an LEA think that

- a child has (or probably has) special educational needs, and
- it is necessary (or probably necessary) to decide what special educational provision these needs call for,

they have to make an *assessment* of those needs (Education Act 1996, s 323). If in the light of this assessment they still need to decide what provision is called for, they then have to make a *statement of special educational needs* (s 324).

If a child has been 'statemented', this need not be an obstacle to home education. Section 7 of the 1996 Act requires parents to provide education 'suitable to any special educational needs [the child] may have', but this education may be delivered 'either by regular attendance at school or otherwise'.

The child's statement of special educational needs will give a further indication of what kind of arrangements might be 'suitable'. However, the LEA need not arrange for the specific provision set out in the statement to be made if 'the child's parent has made suitable arrangements' (s 324(5)).

Sometimes an existing statement may be worded in such a way that it seems incompatible with 'otherwise' education. In such cases it may be necessary to request a review of the statement and to negotiate with the LEA over just how the child's needs might reasonably be met elsewhere. But some 'needs' may actually turn out to relate more to the school environment than to the world at large. In fact, parents often find home-based education particularly appropriate to

'special needs' children, since they are better placed to understand and cater for all aspects of their individual child's welfare in a flexible way.

Special schools

Education (Pupil Registration) Regulation 9(2) provides that children who have been placed by the LEA in special schools may not be deregistered without the LEA's consent. This restriction is meant to protect the interests of more vulnerable children by ensuring that their special needs are met. Using it to make it harder to home educate such children would be unreasonable, and could be interpreted as discrimination and prejudice.

Legal problems

For most of the time, most home-educating families get on with their LEAs without serious disagreement. Where conflicts arise they are nearly always resolved informally. Only a small number of disputes with LEAs result in legal action. After all, local authorities are generally no more eager to go to law than home educators are.

When cases do come to court, typically they involve other issues (e.g. marital disputes), or else they arise when a family is just embarking on home education, possibly in connection with earlier school attendance problems. If parents have suddenly been thrown into home education as a result of a crisis they may already be involved in legal proceedings.

The best way of avoiding problems is to be well informed about the law, and if necessary to seek help from the home-educating community. Families who know what might happen are much better equipped to avoid it; and if they join Education Otherwise they are well placed to obtain support in resolving any conflicts with the authorities before they get out of hand.

In the following sections prosecutions and court orders are described. Afterwards we turn to the practicalities of dealing with conflicts.

Prosecutions

The LEA can prosecute parents for two offences under the Education Act 1996. One is failing to see that a registered pupil goes to school regularly (s 444); the other is failing to comply with a school attendance order (s 443). In the first case it makes no difference whether or not the child is receiving suitable 'otherwise' education, but in the second parents have the right to defend the adequacy of their provision in court. For this reason it is important to make sure children are deregistered when taking them out of school to begin home education.

School attendance orders

It is unreasonable for the LEA to conclude that suitable education is not being provided until the family has had enough time to start home educating and a fair opportunity to show that their provision is adequate. However, if after making informal enquiries it still appears to them that the child is not receiving suitable education, the LEA are required to take certain formal steps. This procedure is set out in sections 437-443 of the 1996 Act:

1. The LEA serve the parents with a notice giving them at least two weeks to satisfy them that the child is being educated properly.

2. If the parents fail to satisfy them, the LEA then have to consider whether it is expedient for the child to go to school. If they think it is, they must serve a *school attendance order*. But before they do this they must first serve the parents with a notice telling them which school they intend to name in the order, and giving them the chance to choose an alternative. (This does not apply if the child has a statement of special educational needs.)

3. The LEA then serve the order, requiring the parents to register the child as a pupil at the school named in it.

4. At this point the parents can ask for the order to be revoked because they are educating 'otherwise'. (Alternatively they can ask for the order to be amended because the child has been offered a place at a different school, but this option is unlikely to be relevant. None of this applies if the child has a statement of special educational needs.)

5. If asked to revoke the order, the LEA can refuse only if they think no satisfactory 'otherwise' arrangements have been made. In this case the parents can appeal to the Secretary of State.

6. If the parents do not comply with the order, the LEA can take them to court. Here they will still have the opportunity to show that they are educating 'otherwise'.

Education supervision orders

In cases of both irregular attendance and failing to comply with a school attendance order, the LEA have a further duty to consider applying under s 36 of the Children Act 1989 for an *education supervision order* (ESO). This duty applies whether or not they decide to prosecute under the Education Act 1996. Likewise, in the course of proceedings under the 1996 Act the court itself may direct the LEA to apply for such an order (Education Act 1996, s 447).

Before the court makes an ESO it must be satisfied that the child is not being properly educated. In some circumstances this could give home-educating families a chance to show that their arrangements are suitable.

ESOs were introduced in 1991 as a more appropriate response to truancy than care orders. Their effect is to suspend the parents' duties under sections 7 and 444 of the 1996 Act, and to transfer responsibility for the child's education to a designated supervisor. The supervisor has to 'advise, assist and befriend' the child and parents, and give directions to them in such a way as to secure that the child is properly educated.

In the first place the supervisor must try to find out the wishes and feelings of the child and parents. When giving directions, the supervisor must then take these wishes and feelings into account. This includes, in particular, 'their wishes as to the place at which the child should be educated'. (Since the word 'school' is not used, home education is not ruled out.)

Once an ESO has been made, the family must comply with the supervisor's directions. If they persistently and unreasonably fail to do so, they risk prosecution or perhaps even care proceedings. However, the child or parent may apply to the court to have the order discharged. This might be appropriate for instance if, with the supervisor's agreement, the family have successfully embarked on home education in the meantime.

LEAs are unlikely to apply for an ESO without the family's cooperation. As the effect of an ESO could be to lessen the family's control of the situation, parents should think carefully before agreeing, even if the alternative is prosecution.

Care orders

Since the Children Act 1989 it has no longer been permissible to make a *care order* on purely educational grounds. However, before applying for an ESO, the LEA have to consult the social services department; and if there are non-educational grounds for concern these could result in a care order being made instead.

To make a care order under the Children Act 1989, the court must be satisfied that the child is suffering, or is likely to suffer, 'significant harm', and that the order will improve matters (s 31). 'Harm' includes, among other things, the impairment of intellectual development.

Dealing with LEAs

When dealing with the LEA, a number of precautions may help to lessen the risk of future problems:

- Keep records of any contact.
- Have witnesses present at meetings.
- Ask for copies of reports.
- If a questionable statement, comment or suggestion is made, ask for it to be confirmed in writing.
- Work on drafting a statement of your general approach to home education (even if you don't need to use it immediately).
- Keep day-to-day notes of your child's activities for your own reference (but don't feel obliged to show them to the LEA in that form).
- Keep a file of your child's work (but don't allow it to dictate the way you do things).
- If necessary, collect character statements and independent reports.

Even if things are going smoothly it is useful to keep methodical records of contacts. A chronological file of communications would include:

- actual letters received
- dated copies of letters sent
- notes of phone calls, meetings and visits, with dates, names and a summary of what was said.

Conflicts and disputes

Sometimes problems occur simply because an official is not familiar with the legal status of home education. Often a friendly approach to the officer's immediate superior may be all that is required. If the problem is more serious, however, it may be necessary to complain to the Director of Education (or Chief Education Officer). If this provides no satisfaction, the next steps may be to approach the chief executive of the council, a local councillor, and/or a member of the education committee.

If the problem has still not been resolved, and you think you have been unfairly treated, another possibility is to complain to the local ombudsman. (You are encouraged to do this via your local councillor, but this is not essential.) The local ombudsman cannot overturn a decision simply because you disagree with it, but (s)he *can* ascertain whether the LEA is guilty of maladministration or prejudice. The local

ombudsman may not be approached about a matter which has already gone to court, or where an appeal has been lodged with a tribunal, or where a government minister has been contacted (including the Secretary of State for Education).

Other UK jurisdictions

The information in this leaflet relates to England and Wales. All UK jurisdictions require parents to secure their children's education either by school attendance or by other means; but only in England and Wales is there a regulation providing for 'deregistration on demand'.

In Scotland, children may not be withdrawn from school without the education authority's consent, 'which consent shall not be unreasonably withheld'. The Scottish Parliament has issued guidance for education authorities 'as to the circumstances in which parents may choose to educate their children at home', and this can be expected to provide a framework for relations with home-educating families.

All UK jurisdictions provide for the authority to intervene where educational arrangements seem to be unsatisfactory, but in Scotland the relevant legislation differs from that described here in a number of details. Likewise, the Scottish law on special educational needs resembles the English law, but varies in its details and in its terminology.

(For more information about the law in Scotland, see separate leaflet *Home education and the law in Scotland*.)

Education Otherwise

All families have the right to take direct responsibility for their children's education instead of delegating it to schools, but many are unaware of this. **Education Otherwise** is a self-help organisation which aims to uphold and publicise this right.

Would you like to help? If so, please contact us. Your involvement could help to spread awareness of home education and to make sure that home-educating families get the support they need.

Other organisations

Advisory Centre for Education (ACE)

www.ace-ed.org.uk

Freephone advice line: 0808 800 5793 (Monday-Friday, 2:00-5:00)

Children's Legal Centre

www.childrenslegalcentre.com

Administration/Publications: 01206 872466

Education Law and Advocacy Unit: 01206 874807

Education Otherwise Information Leaflet Series

This leaflet is only a guide and should not be taken as an authoritative statement of the law.

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